

# 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

**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*, 98 N.M. 473, 649 P.2d 1386 (1982).

**1927 act.** — The 1927 act was a comprehensive Election Code. *State ex rel. Abercrombie v. District Court*, 37 N.M. 407, 24 P.2d 265 (1933).

**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*, 34 N.M. 438, 283 P. 902 (1929).

**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*, 25 N.M. 175, 179 P. 629 (1919).

**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. 1963-64 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.

### **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*, 48 N.M. 417, 152 P.2d 157 (1944) (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 the day after the last general election and ending on the day of the general election;

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

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

**History:** Laws 2003, ch. 356, § 1; 2011, ch. 137, § 4.

#### **ANNOTATIONS**

**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.

History: Laws 2011, ch. 137, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 2 effective July 1, 2011.

### **1-1-4. Qualified elector.**

As used in the Election Code, "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.

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

#### **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 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.*, 111 N.M. 317, 805 P.2d 86 (Ct. App. 1990).

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.*, 111 N.M. 317, 805 P.2d 86 (Ct. App. 1990).

**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).

### **1-1-5. Voter.**

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

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

### **ANNOTATIONS**

**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.*, 111 N.M. 317, 805 P.2d 86 (Ct. App. 1990).

**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; counting of hand-tallied ballots.**

A. A vote on a paper ballot used on an electronic vote tabulating system, optical scan vote tabulating system or high-speed central count vote tabulator consists of a voter's selection of a candidate or answer to a ballot question indicated in the voting response area of the paper ballot marked in accordance with the instructions for that ballot type.

B. For paper ballots that are 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 cross or check within the voting response area for the preferred candidate or answer to the ballot question; or
- (4) the presiding judge and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.

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.

### **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.

**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.

## **1-1-6. 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*, 99 N.M. 160, 655 P.2d 1004 (1982).

### **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, 112 N.M. 42, 811 P.2d 75 (1991).



**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*, 112 N.M. 42, 811 P.2d 75 (1991).

**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*, 57 N.M. 588, 261 P.2d 131 (1953), and do not preclude the possibility of multiple residences. *Apodaca v. Chavez*, 109 N.M. 610, 788 P.2d 366 (1990).

**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*, 109 N.M. 610, 788 P.2d 366 (1990).

**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.*, 97 N.M. 472, 641 P.2d 503 (1982); reversing 93 N.M. 655, 604 P.2d 121 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 92 N.M. 470, 590 P.2d 169 (Ct. App. 1979).

**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*, 70 N.M. 196, 372 P.2d 387 (1962).

**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*, 70 N.M. 196, 372 P.2d 387 (1962).

**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*, 70 N.M. 196, 372 P.2d 387 (1962).

**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. Board of County Comm'rs v. Board of County Comm'rs*, 59 N.M. 9, 277 P.2d 960 (1954); *Arlledge v. Mabry*, 52 N.M. 303, 197 P.2d 884 (1948).

**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*, 52 N.M. 303, 197 P.2d 884 (1948).

**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. 1955-56 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. 1955-56 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." 1955-56 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. 1953-54 Op. Att'y Gen. No. 53-5841.

**Resident required to re-register in former county.** — A former resident of a county who has been voting in another county may not register again in the former county without a 90-day residence. Although a person may live or work in another county and maintain his residence in the county from which he moved, once he establishes residence elsewhere, he cannot say that he has maintained his residence in the former county, and in order to re-register in it, he must actually have resided there the requisite time. 1939-40 Op. Att'y Gen. 147.

**Residence is matter of intention,** and intention is an abstract thing of the mind that can be gathered only from the person's declarations, acts and conduct. 1939-40 Op. Att'y Gen. 142.

**Effect of temporary removal.** — The mere fact that a person temporarily removes himself from the limits of a municipal corporation does not deprive him of the right to vote in municipal elections, especially if he has moved back into the municipality and is living there at the time of the election. 1939-40 Op. Att'y Gen. 142.

**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*, 57 N.M. 588, 261 P.2d 131 (1953), and do not preclude the possibility of multiple residences. *Apodaca v. Chavez*, 109 N.M. 610, 788 P.2d 366 (1990).

**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*, 109 N.M. 610, 788 P.2d 366 (1990).

**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.

### **1-1-8. Election returns.**

As used in the Election Code [Chapter 1 NMSA 1978], "election returns" means the certificate of the precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books,

machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk.

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

## ANNOTATIONS

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 39 N.M. 79, 39 P.2d 1027 (1934).

**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*, 39 N.M. 79, 39 P.2d 1027 (1934).

**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.

## 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 [Chapter 1 NMSA 1978], "precinct" means a designated division of a county for election purposes which is entitled to a polling place and a precinct board. For purposes of municipal or school district elections, a precinct may also be coterminous with the boundaries of the municipality or school district as the case may be.

**History:** 1953 Comp., § 3-1-10, enacted by Laws 1969, ch. 240, § 10.

### **ANNOTATIONS**

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

**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. 1953-54 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 the combination of two or more precincts into one polling place pursuant to the provisions of Section 1-3-4 NMSA 1978.

B. When consolidated precincts are used in an 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.

### **ANNOTATIONS**

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

**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. 1953-54 Op. Att'y Gen. No. 54-6067 (opinion rendered under former law).

### **1-1-13. Precinct board.**

As used in the Election Code, "precinct board" or "poll workers" means the appointed election officials serving a single precinct, a consolidated precinct, an absent voter precinct or an alternate voting location.

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

## **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 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 for not less than seven days prior to an election or to an action to be taken.

B. A posting as described in Subsection A of this section is satisfied by posting in the office of:

(1) the secretary of state and on the secretary of state's web site, when the secretary of state has the duty to post; or

(2) the county clerk and on the county's web site, if the county maintains a web site, 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.

### ANNOTATIONS

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

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



## 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 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 notaries public, see 14-12A-1, 14-13-3 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 [Chapter 1 NMSA 1978] applies to the following:

- (1) general elections;
- (2) primary elections;
- (3) statewide special elections;

- (4) elections to fill vacancies in the office of representative in congress; and
- (5) school district elections.

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:

- (1) municipal officer or municipal bond elections; or
- (2) special district officer or special district bond or other special district elections.

**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.

## 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.

**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 of 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.*, 106 N.M. 426, 744 P.2d 554 (Ct. App. 1987).

**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.*, 65 N.M. 147, 333 P.2d 1051 (1958).

**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*, 56 N.M. 560, 246 P.2d 1046 (1952).

**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 [Chapter 1 NMSA 1978], 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.

History: Laws 2005, ch. 270, § 1.

## ANNOTATIONS

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

For computation of time in the district courts, see Rule 1-006 NMRA.

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

### **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.

## **ARTICLE 2**

### **Election Officers and Boards**

#### **1-2-1. Secretary of state; chief election officer; rules; enforcement powers.**

A. The secretary of state is the chief election officer of the state and shall:

(1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code [Chapter 1 NMSA 1978];

(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 fifty-six days before a primary or a general election; and

(3) through the attorney general or the district attorney having jurisdiction, bring such actions as deemed necessary and proper for the enforcement of the provisions of the Election Code.

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

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

## 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 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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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 and district attorneys required to assist secretary of state.**

A. The attorney general and the several district attorneys of the state upon request of the secretary of state shall provide to the secretary of state legal advice, assistance, services and representation as counsel in any action to enforce the provisions of the Election Code [Chapter 1 NMSA 1978].

B. Upon the request of the secretary of state, the attorney general and the several district attorneys of the state shall assign investigators or lawyers to aid the secretary of state on election day to ensure the proper conduct of the election.

**History:** 1978 Comp., § 1-2-1.1, enacted by Laws 1979, ch. 74, § 3; 1981, ch. 159, § 1.

## ANNOTATIONS

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

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

The secretary of state shall:

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

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

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

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

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

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

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

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

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

## ANNOTATIONS

**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.

### **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. 1959-60 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; training manual.**

A. The secretary of state shall provide:

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

(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

**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. Precinct board; appointment; term.**

A. The county clerk on or before fifty-five days next preceding the primary election shall appoint the precinct board for each precinct.

B. The members of the precinct board shall be appointed for a term of two years.

C. In the event of a vacancy in the office of precinct board member by reason of death, removal from the county, disqualification, refusal to serve or excusal by the

county clerk for sufficient cause, the county clerk shall appoint a qualified person to fill the vacancy for the unexpired term.

**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.

## ANNOTATIONS

**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*, 51 N.M. 484, 188 P.2d 337 (1947).

**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*, 50 N.M. 281, 176 P.2d 173 (1946).

**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*, 22 N.M. 30, 158 P. 1088 (1916).

**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. Precinct board; qualification of members; qualification of presiding judges; qualification of minors.**

A. In order to qualify as a member of the precinct 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 a precinct board member's functions with acceptable skill and dispatch; and
- (4) execute the precinct board member's oath of office.

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

C. No person shall be qualified for appointment or service on a precinct board:

- (1) who is a candidate to be voted for at the election;
- (2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election;
- (3) who is married to a parent, child, brother or sister of any candidate to be voted for at the election or who is the parent of the spouse of any candidate to be voted for at the election; or
- (4) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

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

- (1) meet the qualifications set forth in Subsection A of this section, except the minor need not be eligible to vote;
- (2) be sixteen or seventeen years of age at the time of the election in which the minor is serving as a member of a precinct board;
- (3) be a citizen at the time of the election for which the minor will be serving as a member of a precinct board;
- (4) have the approval of the minor's parent or legal guardian, unless the minor is emancipated;
- (5) attend at least one school of instruction in accordance with the provisions of Section 1-2-17 NMSA 1978; and

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

E. A minor appointed to a precinct 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.

## ANNOTATIONS

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

**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*, 51 N.M. 484, 188 P.2d 337 (1947).

**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. Precinct board; lists from major political parties.**

The county chairman of each of the major political parties may file with the county clerk at least thirty days before the date of appointment the names of not more than four voters for each precinct to be considered for appointment as a member of the precinct board. Such names shall be those of persons residing in the precinct to which they are to be appointed and who meet the qualifications required for a precinct board member.

The county chairman may indicate his order of preference for each of the persons recommended for each precinct.

**History:** 1953 Comp., § 3-2-9, enacted by Laws 1975, ch. 255, § 14; 1987, ch. 249, § 1; 1991, ch. 105, § 2.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1975, ch. 255, § 14, repealed former 3-2-9, 1953 Comp., relating to precinct board appointment list, and enacted a new 3-2-9, 1953 Comp.

**The 1991 amendment,** effective April 2, 1991, deleted "and the names of not more than four voters to be considered for appointment as an alternate for a member of the precinct board" at the end of the first sentence.

**Minor party's attack on board's compensation did not warrant convening three-judge court.** *La Raza Unida v. New Mexico*, 577 F.2d 677 (10th Cir. 1978).

**County commissioners must appoint election officials from lists** furnished by the chairmen of the dominant political parties for that purpose. 1959-60 Op. Att'y Gen. No. 60-71 (opinion rendered under former law).

### 1-2-9. Precinct board; standby list.

A. Not less than twenty-one days prior to the date for appointing members of precinct boards, the county clerk shall publish a notice once in a newspaper of general circulation to the effect that precinct 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 precinct board members. The persons on the standby list shall have the same qualifications and comply with the same requirements as provided for precinct board members.

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

### ANNOTATIONS

**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. Precinct board; appointment by county clerk.**

The county clerk shall appoint the precinct board for each precinct in the following order:

- A. from the list submitted by the major party county chairs in the order stated thereon;
- B. from the list of minors who qualify to be precinct board members at the discretion of the county clerk;
- C. from the standby list; and
- D. from any other list of voters who have the same qualifications and comply with the same requirements as provided for precinct board members.

History: 1953 Comp., § 3-2-9.2, enacted by Laws 1975, ch. 255, § 16; 2010, ch. 90, § 2.

### **ANNOTATIONS**

**The 2010 amendment**, effective May 19, 2010, added Subsection B and relettered the remaining sections accordingly.

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

29 C.J.S. Elections § 59.

## **1-2-11. Precinct board; assignment.**

Wherever possible, the county clerk shall assign persons appointed as precinct 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 precinct board members in certain precincts, the county clerk may, in the best interest of the election process, assign appointed precinct board members to serve on any precinct 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.

### **ANNOTATIONS**

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

## **1-2-12. Precinct board; number for each precinct.**

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

- (1) a presiding judge;
- (2) two election judges; and
- (3) one election clerk.

B. The county clerk, in appointing precinct boards for primary, general and special federal elections:

(1) shall appoint presiding judges and election judges so that at least one election judge shall not be of the same political party, if any, as the presiding judge; and

(2) may appoint teams of presiding judges and election judges for absent voter precincts and alternate voting locations, provided that each team meets the requirements pursuant to Paragraph (1) of this subsection.

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

- (1) a presiding judge;
- (2) one election judge; and
- (3) one election clerk.

D. If the county clerk determines that additional election clerks are needed, the clerk may appoint such additional election clerks as the clerk deems necessary.

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.

## ANNOTATIONS

**Cross references.** — For appointment of precinct board, see 1-2-6 and 1-2-10 NMSA 1978.

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

**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*, 40 N.M. 199, 57 P.2d 293 (1936).

**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*, 30 N.M. 482, 239 P. 524 (1925).

**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*, 15 N.M. 728, 110 P. 1038 (1910).

**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. 1943-44 Op. Att'y Gen. No. 44-4442.

**1-2-13. Repealed.**

## 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. Precinct boards; notice of appointment.**

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

(1) make and certify a list of the names of the appointees for each polling location, 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 send a copy of the list upon request to the county chair of each political party participating in the 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 a precinct 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 precinct 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.

### **ANNOTATIONS**

**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. Precinct board; vacancy on election day.**

A. If for any cause a member of the precinct board is not present on election day at the precinct for which he or she was appointed, the remaining board members shall notify the county clerk who shall fill the vacancy.

B. If the board members are unable to contact the county clerk in a timely manner, the vacant position shall be filled as follows:

(1) if there is a vacancy in the position of presiding judge, the remaining board members shall elect one of the election judges to fill the vacancy;

(2) if there is a vacancy in the position of election judge, the presiding judge shall appoint an election clerk of a different political party than that of the remaining election judge; however, if there is no election clerk of a different political party, the presiding judge shall appoint a voter of the precinct who is of a different political party than that of the remaining election judge; and

(3) if the vacancy is in the position of election clerk, the presiding judge shall appoint any voter of the precinct to fill the vacancy, provided the voter is of a different political party than the remaining election clerk on a five-member board or of a different political party than that of the presiding judge on a four-member board.

C. No vacancy on election day shall prevent the remaining board members from proceeding to open the polls and conducting the election in their assigned precinct.

**History:** 1978 Comp., § 1-2-15, enacted by Laws 1991, ch. 105, § 6.

#### **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.

#### **1-2-16. Precinct board; compensation.**

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

B. Members of a precinct board assigned to alternate 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, precinct board members are designated as seasonal employees.

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

#### **ANNOTATIONS**

**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. Precinct board; schools of instruction.**

A. The county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections.

B. The schools for instruction provided for in this section shall be as follows:

- (1) one school not less than seven days before the primary election;
- (2) one school not less than seven days before the general election; and
- (3) one school not less than seven days before any other statewide 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 notice of the school shall be given to the public press at least four days before the school is to be held. Each member of the precinct board shall be notified at least seven days prior to commencement of the school.

E. A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person is appointed to serve or 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.

## ANNOTATIONS

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

**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 than 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 or 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. Precinct board members; identification badges.**

At all times on election day while performing their duties, members of the precinct 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 board member's title and political party.

**History:** 1953 Comp., § 3-2-17, enacted by Laws 1969, ch. 240, § 38.

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

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

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

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

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

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

### **ANNOTATIONS**

**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; compensation.**



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

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] each way over the usually traveled route. The mileage shall be paid within thirty days following the date of election if funds are available for payment.

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.

### ANNOTATIONS

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

**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 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, the precinct chair of the political party may appoint in writing one challenger for the polling location corresponding to the precinct.

C. If any precinct chair fails to make such appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint one challenger in writing.

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

### ANNOTATIONS

**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; qualifications; restrictions.**

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

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

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

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

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

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

### **ANNOTATIONS**

**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, shall be permitted to be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close.

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

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

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

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

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

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

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

## ANNOTATIONS

**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 a precinct 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 precinct board 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 two 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 precinct board conducts its business, 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.

## ANNOTATIONS

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

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

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

## ANNOTATIONS

**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 appoint watchers in a county if the organization provides a written notice to the secretary of state at least ten days prior to the election date 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 may appoint watchers in a county if the candidates provide a written notice to the secretary of state at least ten days prior to the election date 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.

## ANNOTATIONS

**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. 1949-50 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. 1943-44 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.

## 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 of a written appointment, a watcher or election observer may:

- (1) be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close;
- (2) be permitted to observe that the election is being conducted in accordance with the Election Code;
- (3) view the precinct voter list to ascertain whether a voter has voted, subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code;
- (4) view any voting machine being used in the precinct in the same manner that challengers may examine the voting machines; and
- (5) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board charged with the performance of a duty by the Election Code.

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

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

## ANNOTATIONS

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

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

#### **ANNOTATIONS**

**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 the ballot may appoint in writing county canvass observers. A candidate for elected office and an election-related organization may each appoint county canvass observers in a county if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date 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. 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 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.

## ANNOTATIONS

**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 the ballot may appoint in writing state canvass observers. A candidate for elected office and an election-related organization may each appoint state canvass observers if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date 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 of examining 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.

## ANNOTATIONS

**Effective dates.** — Laws 2011, ch. 137, § 111 made Laws 2011, ch. 137, § 11 effective July 1, 2011.

## **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 for general or primary election purposes shall not have had more than eight hundred votes cast in person in that precinct at the last preceding general election.

C. Each county clerk shall provide and maintain a suitable map showing the current geographical boundaries with designation of each precinct, 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. Such map, with attached description, is a public record.

D. Each county clerk shall send a copy of each map with attached description to the secretary of state. These copies are also public records.

**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.

#### **ANNOTATIONS**

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

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

For precinct boundaries, see 4-38-20 NMSA 1978.

**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. 1961-62 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. 1961-62 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.**

A. Not later than the first Monday in November of each odd-numbered year, the board of county commissioners shall by resolution:

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

(2) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;

(3) create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978;

(4) consolidate any precincts pursuant to Section 1-3-4 NMSA 1978;

(5) divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and

(6) designate any mail ballot election precincts.

B. 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 a copy of the map showing the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

C. 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. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of each odd-numbered year. Upon approval of the new or changed precincts by the secretary of state, the precincts and polling places as changed by the resolution of the boards of county commissioners and approved by the secretary of state shall be the official precincts and polling places for the next succeeding primary and general elections.

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.

## ANNOTATIONS

**Cross references.** — For filing description of precinct boundaries, see 4-38-20 NMSA 1978.

For creation of new precincts, see 4-38-21 NMSA 1978.

For change in precinct boundaries, see 4-38-22 and 4-38-23 NMSA 1978.

**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. 1961-62 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. 1951-52 Op. Att'y Gen. No. 52-5489.

**Commissioners to divide precinct into districts.** — The board of county commissioners must divide into voting districts precincts wherein more than 400 (now

800) votes were cast at a single voting place at the last general election. 1935-36 Op. Att'y Gen. 117.

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

### **1-3-3. Precincts; combined.**

A. In the interest of economy, the board of county commissioners may combine any precinct where the total vote cast from that precinct in the last preceding general election was less than one hundred with an adjacent and contiguous precinct.

B. No such combination shall be made where the total vote cast from both precincts in the last preceding general election exceeds eight hundred or where such combinations would cross legislative district boundary lines.

History: 1953 Comp., § 3-3-3, enacted by Laws 1969, ch. 240, § 52; 1975, ch. 255, § 29; 2011, ch. 137, § 29.

#### **ANNOTATIONS**

**The 2011 amendment**, effective July 1, 2011, changed the maximum number of votes cast that prevents the combination of precincts from six hundred to eight hundred votes.

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

### **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.**

A. Precincts may be consolidated by the board of county commissioners for the following elections:

- (1) primary and general elections;
- (2) statewide special elections;
- (3) countywide special elections; and

(4) elections to fill vacancies in the office of the United States house of representatives.

B. Precincts may be consolidated by the governing body of a municipality for municipal candidate and bond elections, unless otherwise prohibited.

C. Precincts may be consolidated by the local school board for school district candidate and bond elections, unless otherwise prohibited.

D. When precincts are consolidated for a primary and general election, 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 designation of the polling place. In addition, when consolidating precincts for primary and general elections:

(1) any voter of the county shall be allowed to vote in any consolidated precinct polling location in the county;

(2) each consolidated precinct shall be comprised of no more than ten precincts;

(3) each consolidated precinct shall comply with the provisions of Section 1-3-7 NMSA 1978;

(4) each consolidated precinct polling location shall have a broadband internet connection and real-time access to the statewide voter registration electronic management system;

(5) the county clerk may maintain any alternative voting locations previously used in the same election open for voting on election day for any voter in the county, in addition to the polling location established in each consolidated precinct; and

(6) the board of county commissioners may permit rural precincts to be exempted from operating as or being a part of a consolidated precinct; provided that if the precinct is not designated as a mail ballot election precinct pursuant to Section 1-6-22.1 NMSA 1978 and the polling place for the rural precinct does not have real-time access to the statewide voter registration electronic management system, voters registered in a rural precinct as described in this paragraph are permitted to vote in any consolidated precinct polling location 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 rural precinct.

E. When precincts are consolidated for a municipal election, school election or special county election, the proclamation, in addition to the other matters required by law, shall state which precincts have been consolidated and the designation of the polling place. Precincts consolidated for a municipal election, school election or special

county election may allow any voter to vote in any consolidated precinct in the county, which shall be stated in the proclamation.

F. When precincts are consolidated for a statewide special election or for a special election to fill a vacancy in the office of the United States house of representatives, within twenty-one days after the proclamation of election is issued by the governor, the board of county commissioners shall pass a resolution that, in addition to other matters required by law, shall state which precincts have been consolidated and the designation of the polling place. Precincts consolidated for a statewide special election or for a special election to fill a vacancy in the office of the United States house of representatives may allow any voter to vote in any consolidated precinct in the county, which shall be stated in the resolution.

G. Unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived, each consolidated precinct polling location shall:

(1) have ballots available for voters from every precinct that is able to vote in the consolidated precinct;

(2) have at least one optical scan tabulator programmed to read every ballot style able to be cast in the consolidated precinct;

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

(6) 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

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

H. As a prerequisite to consolidation, the authorizing resolution must find that consolidation will make voting more convenient and accessible to voters of the consolidated precinct and does not result in delays for voters in the voting process and the consolidated precinct voting location will be centrally located within the consolidated precinct.



History: 1953 Comp., § 3-3-4, enacted by Laws 1975, ch. 255, § 30; 2011, ch. 131, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1975, ch. 255, § 30, repealed 3-3-4, 1953 Comp., relating to consolidation of precincts, special elections and notice, and enacted the above section.

**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 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.**

No precinct shall be created, divided, abolished or consolidated or the boundaries or polling place therein changed less than four months prior to each election, except by order of the district court.

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

## ANNOTATIONS

**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. 1959-60 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. 1945-46 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, at any time not less than fifty-five days prior to any general 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 thereof 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.

### ANNOTATIONS

**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. 1961-62 Op. Att'y Gen. No. 62-43 (opinion rendered under former law).

### 1-3-6.1. Repealed.

### 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.

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.

F. Public schools may be closed for elections at the discretion of local school boards.

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.

## ANNOTATIONS

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

**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*, 102 N.M. 2, 690 P.2d 445 (1984).

**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. 1961-62 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".

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

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

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

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

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

### **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.

### **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 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 2010 census block maps; or
- (3) approved by the secretary of state and the bureau of the census.

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

- (1) all state and federal highways;
- (2) all numbered and named county roads that have been certified to the department of transportation;
- (3) all military installation boundaries and federal and state prison boundaries;
- (4) all major railroad lines;

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

(6) all streets within urban areas; and

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

C. The board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, 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 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 in a format approved by the secretary of state or four copies of the precinct maps 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 2011 redistricting. For the 2012 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. 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.

F. Precincts shall be designated solely by whole numbers.

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.

## 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.

**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. Secretary of state powers and duties.**

A. 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 [1-3-10 to 1-3-14 NMSA 1978]. Those county precinct maps determined not to be in compliance with the precinct boundary criteria set forth in Subsection A of Section 1-3-12 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 and resubmit one copy of the corrected county precinct map within thirty days after receiving notice of noncompliance.

B. Prior to January 1, 2012, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of redistricting, the secretary of state shall notify any county of those boundary adjustments that are necessary in that county. Upon review and certification of the adjusted precinct boundaries, the county shall submit the certified precinct changes to the secretary of state for final approval of the precincts for the 2012 primary and general elections.

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.

### **ANNOTATIONS**

**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 1-3-12 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. No building used as a polling place for the conduct of an election in any class A county shall house:

(1) more than four precinct polling places in the conduct of any single election; and

(2) more than two precinct polling places in any single room.

B. The restrictions set forth in Subsection A of this section may be waived with the approval of the director of the bureau of elections and do not apply to precincts that are consolidated pursuant to the provisions of Section 1-3-4 NMSA 1978.

C. The location of each precinct polling place within the building shall be clearly designated by appropriate signs, prominently and clearly displayed at a height no less than six feet from the floor. Signs for each precinct polling place shall also be clearly displayed outside the building where polling takes place.

D. Not less than thirty days prior to any election at which the building is intended for use as a polling place, the county clerk or the clerk's designated representative shall physically inspect each such facility to determine its suitability for precinct polling places and its capability of handling heavy voter traffic in the most expeditious manner with a maximum efficiency and minimum discomfort of the voter. In the event the building is found to meet these standards, the county clerk shall certify for the record its acceptability.

E. 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.

#### **ANNOTATIONS**

**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 primary or general 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 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 precinct 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.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 189 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 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.*, 65 N.M. 147, 333 P.2d 1051 (1958).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 30, 145 P.2d 487 (1944).

**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*, 39 N.M. 79, 39 P.2d 1027 (1934).

**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*, 27 N.M. 169, 199 P. 370 (1921).

**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*, 27 N.M. 169, 199 P. 370 (1921).

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

**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. 1963-64 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. 1959-60 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. 1959-60 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. 1959-60 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. 1953-54 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.

## **1-4-2. Qualification for registration.**

Any resident of New Mexico who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [Chapter 1 NMSA 1978] to register and become a voter.

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

## **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 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*, 6 N.M. 643, 30 P. 936 (1892).

**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*, 6 N.M. 643, 30 P. 936 (1892).

**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. 1953-54 Op. Att'y Gen. No. 54-5948.

**Residence required for former resident to re-register.** — A former resident of a county who has been voting in another county may not re-register in the former county without a 90-day residence. 1939-40 Op. Att'y Gen. 147.

**Age required at registration for primary election.** — Because "election" is defined to mean primary elections as well as general elections, a person who will not be 21 years of age at the next succeeding primary election is not entitled to be registered before the primary election, even though he will be 21 years of age at the time of the ensuing general election. 1939-40 Op. Att'y Gen. 147.

**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. 1957-58 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.

E. Only when the certificate of registration is properly filled out, subscribed 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. 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.

F. 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.

## 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 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 it is 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.** 1959-60 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. 1955-56 Op. Att'y Gen. No. 55-6342.

**They may be mailed or sent to clerk.** — There is no specific provision that execution of the affidavit must be made before the county clerk or a registration officer, and although the clerk may not solicit registration outside his office personally or by deputies, registration affidavits may be filled and sworn to before a notary public, and may be mailed or sent to the county clerk by messenger, and the receipt of the original and duplicate within time by the clerk completes the registration. 1939-40 Op. Att'y Gen. 141.

**Clerk should keep complete records and give instructions.** — The forms delivered to the county clerk are numbered and he should keep a complete record as to the persons to whom affidavits are mailed or delivered, for execution, and should take such other precautions as he deems wise, such as the giving of instructions as to the manner in which the affidavit may be executed and returned for filing. 1939-40 Op. Att'y Gen. 141.

**County clerk not to sign affidavits in blank or appoint others to fill them out.** — A county clerk cannot sign registration affidavits in blank and have a reliable person fill them out in any precinct, and he has no right to name persons to act as deputy county clerks and have registration affidavits filled out in the various precincts at any time. 1939-40 Op. Att'y Gen. 106.

**How name should appear on registration affidavit.** — The name of the elector as printed at the top of the registration affidavit is as much a part of the affidavit as his signature. If instructions are followed, the registration clerk prints the full name of the elector as given to him. The proper and practical manner of typing the name at the bottom of the affidavit is as printed at the top, and then in parentheses underneath there should be typed the name as signed to the affidavit, when different from that printed at the top. This will help where registration clerks printed the name of a married woman in the proper manner but she signed under her given name. 1939-40 Op. Att'y Gen. 90.

**Use of initials in name.** — Whether a registration affidavit is executed with the full name of the voter, or with only his initials, it must be accepted for filing by the county clerk when received by mail or turned in by a registration clerk. Likewise the registration of a widow or divorced woman in her own name or the name of her husband, or with the initials of her husband, is entitled to filing. 1939-40 Op. Att'y Gen. 90, 117.

**Person may register with any clerk even if they vote in another precinct.** — Under this act (Laws 1939, ch. 152, now repealed), registration clerks may register any qualified person with the precinct and voting divisions to which such registration clerks have been appointed, whether or not such registrants are legal voters of that or another precinct or voting division within the county. 1939-40 Op. Att'y Gen. 85.

**One member of household may not register for another.** — This act (Laws 1939, ch. 152, now repealed) contemplates only personal registration and does not permit one member of a household to register for the other members thereof, although that was permitted under the prior act, Laws 1935, ch. 147, § 13 (now repealed). The only

exception to personal registration is in Laws 1939, ch. 152, § 7 (now repealed), permitting assistance to persons unable to read or write either English or Spanish or physically incapacitated from so doing. 1939-40 Op. Att'y Gen. 60.

**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 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. Except as provided in Subsection D of this section, 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 not be required to provide physical residence address information on the certificate of registration.

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

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 at least twenty-eight days before the election.

G. Upon 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.

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 and when notice has been received by the registrant shall it constitute an official public record of the registration of the qualified elector.

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 question "Will you be at least eighteen years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be eighteen years of age or older on election day;

(3) the statement "If you checked 'no' in response to either of these questions, do not complete this form.";

(4) 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 current and valid photo identification; 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 identification, the applicant will be required to do so when voting in person or absentee; and

(5) 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.

## ANNOTATIONS

**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.

### **1-4-5.2. Agency registration; form.**

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

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

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

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

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

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

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

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

## 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 form and assure that the certificate of registration to be used in any county is compatible with the data processing systems.

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, social security number, date of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

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.

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.

### **1-4-5.5. 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.

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.

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

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

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

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

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



## 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.

### 1-4-6. 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; federal qualified electors and overseas voters; late registration.**

A. For qualified electors other than federal qualified electors or overseas voters, the following provisions shall apply:

(1) the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk shall close registration at 5:00 p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board;

(2) registration shall be reopened on the Monday following the election;

(3) for purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election;

(4) during the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election, at which time a voter information document shall be mailed to the registrant at the address shown on the certificate of registration;

(5) when the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk; and

(6) the county clerk shall accept for filing any certificate of registration that is subscribed and dated on or before the twenty-eighth day preceding the election and:

(a) received by the county clerk before 5:00 p.m. on the Friday immediately following the close of registration;

(b) mailed and postmarked not less than twenty-eight days prior to any election referred to in this section; or

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

B. For federal qualified electors and overseas voters, the county clerk shall accept a certificate of registration by electronic transmission from a voter qualified to apply for

and vote by absentee ballot in the county if the transmission is received before 5:00 p.m. on the Friday immediately preceding the election.

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.

## ANNOTATIONS

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

**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. 1963-64 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. 1947-48 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. 1943-44 Op. Att'y Gen. No. 44-4482 (opinion rendered under former law).

**Clerk not to solicit registration outside his office.** — It is not permissible for the county clerk to solicit registration outside of his office. He may, however, receive affidavits for registration at all times in his office except that he shall close registration at five o'clock p.m. on the thirtieth (now twenty-eighth) day preceding any primary and general election, and shall reopen such registration on the Monday following such election. 1939-40 Op. Att'y Gen. 106 (opinion rendered under former law).

**Duty to register anytime except when closed.** — It is the duty of the county clerk to register qualified voters at any time throughout the year that they present themselves to be registered, except during the period of 30 (now 28) days before any primary or general election, when registration is required to be closed. The penalty for failure to

comply with this duty is very severe. 1939-40 Op. Att'y Gen. 91 (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.**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled 1-4-10 NMSA 1978 as 1-12-71 NMSA 1978 effective July 1, 2011.

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

A. Upon receipt of a complete certificate of registration, if 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 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. 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 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 [Chapter 1 NMSA 1978].

C. If the qualified elector does not register in person, indicates that the qualified elector has not previously voted in a general election in New Mexico and does not

provide the registration officer with the required 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.

## ANNOTATIONS

**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 identification card 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 his office up to 5:00 p.m. on the preceding Friday.

C. The contents of certificates of registration, except for the voter's social security number and date of birth, are public records.

**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.

## ANNOTATIONS

**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. 1959-60 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. 1951-52 Op. Att'y Gen. No. 52-5505.

**Chairman of political parties not to be furnished voter lists prior to municipal elections.** — Neither the county clerk nor the city clerk shall furnish the county chairman of political parties with lists of registered voters prior to municipal elections. 1939-40 Op. Att'y Gen. 136.

**Registration lists to be delivered by county clerk to municipal clerk.** — The only thing delivered by the county clerks to the municipal clerks in connection with municipal elections is the registration lists; that is to say the original bound affidavits of all voting divisions which lie in whole or in part within the limits of the municipality. 1939-40 Op. Att'y Gen. 133.

**Inspection of registration records.** — The registration records of each county and precinct are public records under this section. A person may inspect public records in which he has an interest, and the purpose does not seem to be improper. Citizens have an interest in the registration records, and, as such, they shall be entitled at all reasonable times to free access and to the examination of such records without charge. 1939-40 Op. Att'y Gen. 131.

**City clerk not to transfer names furnished by county clerk.** — The law does not contemplate that the city clerk is to transfer the names furnished to him by the county clerk and separate them into the respective wards, for municipal elections, even where a general election precinct or district is partly within and partly outside the municipality,

and because of the provisions of Laws 1939, ch. 99, § 1 (now repealed) which provided that "in all municipal elections the same voting divisions shall be used as at general elections" and "if any such voting division be partly within and partly without the corporate limits of any municipality then and in that event, that portion of such division as may be within the municipal limits shall constitute a voting division for the purposes of municipal elections." 1939-40 Op. Att'y Gen. 125.

**Clerk to determine sufficiency of affidavits.** — The county clerk is to file the affidavits "if in proper form" and must prior to filing determine their sufficiency. This determination may be made both as county clerk and as clerk of the registration board. 1939-40 Op. Att'y Gen. 90.

**Lack of requisite form vitiates affidavit.** — So long as the voter gives his name and swears to the fact that he is or will be at the time of the ensuing election at least 21 (now 18) years of age and a resident of the state, county, district and municipality for the requisite time, and executes the affidavit by signing and swearing thereto, the affidavit is in proper form and should be filed. Only the lack of one of these requisites would vitiate a registration affidavit. The precinct and election district and the municipality, if any, must be shown to make the registration valid. 1939-40 Op. Att'y Gen. 90.

### **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.**

#### **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 but who desires to designate a party affiliation shall execute a new certificate of registration indicating the desired party affiliation.

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

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

#### **ANNOTATIONS**

**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.

**Change need not be made on triplicate copy.** — Where an elector makes application for change of address or designation of party affiliation, or cancellation of affidavit,

without presenting his triplicate affidavit, the change may be effected in the two copies in the hands of the clerk without regard to the triplicate copy, which shall be changed only when presented by the voter either at the time of filing his application, or at a later date. 1939-40 Op. Att'y Gen. 149.

**Voter may be accompanied by another when making change.** — The county clerks have no right to demand that no one accompany a citizen when he makes application for a change of affiliation. Every citizen has a right to be accompanied if he cares to have the presence of another person when on such errand. The citizen, of course, has to sign and swear the application wherein he states his affiliation or change of party affiliation. In fact, he may make this application anywhere before any notary public and bring it to the county clerk or send it by mail or by any other person he chooses. 1939-40 Op. Att'y Gen. 123.

### **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 his existing certificate of registration on file in the county clerk's office on the date of the governor's proclamation of a primary election.

**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.

### **ANNOTATIONS**

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

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 15 and Laws 1993, ch. 316, § 15, both effective June 18, 1993, which deleted "Affidavit of" preceding "Registration" in the section heading, substituted "certificate" for "affidavit" in Subsections A and B, added "of a primary election" at the end of Subsection B, and made a minor stylistic change. The section was set out as amended by Laws 1993, ch. 316, § 15. See 12-1-8 NMSA 1978.

**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*, 48 N.M. 417, 152 P.2d 157 (1944) (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. 1943-44 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.

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 such change but shall not process them until the registration period is open.

C. The application for 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 amendments.** — 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. Laws 1993, ch. 314, § 16, and Laws 1993, ch. 316, § 16, both effective June 18, 1993, enacted identical amendments to this section that substituted "complete a certificate of registration" for "apply to a registration officer" in Subsection A. The section was set out as amended by Laws 1993, ch. 316, § 16. See 12-1-8 NMSA 1978.

**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. 1945-46 Op. Att'y Gen. No. 46-4936 (opinion rendered under former law).

**Change need not be made on triplicate copy.** — When an elector makes application for change of address or designation of party affiliation, or cancellation of affidavit, without presenting his triplicate affidavit, the change may be effected in the two copies in the hands of the clerk without regard to the triplicate copy, which shall be changed only when presented by the voter either at the time of filing his application, or at a later date. 1939-40 Op. Att'y Gen. 149 (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 updates. (Effective July 1, 2014.)**

*A. In addition to updating a certificate of registration in person or by mail, a voter may in accordance with the provisions of Sections 1-4-15 through 1-4-18 NMSA 1978 update an existing certificate of registration electronically by completing a certificate of registration form on the secretary of state's web site. Upon receipt of an updated certificate of registration, the secretary of state shall transmit the certificate to the county clerk of the county in which the registrant resides, and the county clerk shall print the*

updated certificate, file it in the county's register of voters and enter it into the statewide voter file.

*B. A certificate of registration updated electronically shall be electronically authenticated by the registrant 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 [14-16-1 to 14-16-19 NMSA 1978]. A certificate of registration that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the registrant.*

*C. The secretary of state shall ensure that the web site used for electronic registration is secure and that the confidentiality of all users and integrity of data submitted are preserved. The secretary of state shall implement the provisions of this section no later than June 30, 2015.*

*History: Laws 2013, ch. 91, § 1.*

#### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 91, § 2 made Laws 2013, ch. 91, § 1 effective July 1, 2014.

### **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 ninety days prior to a primary or general 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.

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.

## ANNOTATIONS

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

**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*, 33 N.M. 533, 271 P. 469 (1928) (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*, 33 N.M. 533, 271 P. 469 (1928) (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.**

## 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. legal insanity of the voter;
- C. a felony conviction of the voter;
- D. at the request of the voter; or
- E. 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.

## 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 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 cases. 1943-44 Op. Att'y Gen. No. 46-4566 (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. Cancellation of registration; determination of insanity.**

A. For purposes of cancellation of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk.

B. When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it shall file a certification of such fact with the county clerk of the county wherein the individual is registered.

C. The certification of legal insanity shall include the:

- (1) name;
- (2) age;
- (3) sex;
- (4) marital status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any; and
- (8) address.

**History:** 1953 Comp., § 3-4-24, enacted by Laws 1969, ch. 240, § 82; 1993, ch. 314, § 22; 1993, ch. 316, § 22.

### **ANNOTATIONS**

**Cross references.** — For commitment of persons under the Mental Health and Developmental Disabilities Code, see 43-1-10 NMSA 1978 et seq.

For guardians of incapacitated persons, see 45-5-301 to 45-5-313 NMSA 1978.

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 22 and Laws 1993, ch. 316, § 22, both effective June 18, 1993, which deleted "affidavits of" preceding "registration" near the beginning of Subsection A. The section was set out as amended by Laws 1993, ch. 316, § 22. 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 1-4-24 NMSA 1978 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).

## **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. Cancellation of registration following conviction; eligibility for voting upon satisfaction of conditions.**

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

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

- (1) has been unconditionally discharged from a correctional facility or detention center;
- (2) has completed all conditions of parole or supervised probation; or
- (3) has had the conviction overturned on appeal.

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

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

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

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

## ANNOTATIONS

**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;

(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; and

(5) if the voter has changed residence outside of the county, the voter should follow the information provided concerning how the voter can continue to be eligible to vote.

D. The county clerk shall correct the official list of eligible voters in accordance with change of residence information obtained on the prepaid and pre-addressed return card 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.

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 county.

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.

## **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.

For determination of voter's insanity, see 1-4-26 NMSA 1978.

**Repeals and reenactments.** — Laws 1975, ch. 255, § 46, repealed former 3-4-26, 1953 Comp., relating to cancellation of registration due to certain failure to vote, and enacted a new 3-4-26, 1953 Comp.

**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." 1957-58 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. 1943-44 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. 1961-62 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. 1961-62 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.**

## 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. Board of registration; county chairman's list.**

A. On or before the first Monday of February of each odd-numbered year the county chairman of each of the qualified political parties may furnish the board of county commissioners the names of four voters in the county, each of whom is able to read and write legibly and is otherwise competent to perform the duties required of a member of a board of registration.

B. Each county chairman who submits the list provided for in Subsection A of this section shall indicate his preference for appointment to the board of registration by placing the number 1, 2, 3 or 4 opposite the name of each person on his list respectively.

**History:** 1953 Comp., § 3-4-31, enacted by Laws 1969, ch. 240, § 89; 1975, ch. 255, § 51.

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

A. The board of county commissioners shall at its first regular scheduled meeting in February of each odd-numbered year appoint three voters who shall constitute the board of registration for the county.

B. No more than two of the three persons appointed to the board of registration shall be members of the same major political party at the time of their appointment; 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.

C. In addition, the board of county commissioners shall appoint two alternates who shall not belong to the same political party at the time of their appointment.

D. In making all appointments to the board of registration or as alternates to the board of registration from the lists of the county chairmen, the board of county commissioners shall give preference to the names in the order indicated by the numbers on the list.

**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.

#### **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 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 his authorized deputy shall be secretary to the board of registration and shall serve without additional compensation.

**History:** 1953 Comp., § 3-4-33, enacted by Laws 1969, ch. 240, § 91.

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

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

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

#### **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. 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.

#### **ANNOTATIONS**

**Cross references.** — For county officers' oaths, see N.M. Const., art. XX, § 1 and 10-1-13 NMSA 1978.

**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. 1945-46 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; place of meetings.**

The board of registration shall meet at the office of the county clerk.

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

#### **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.**

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

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

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

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

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

(3) the applicant's digital signature shall be affixed to the certificate of registration using an electronic signature in conformance with the Electronic

Authentication of Documents Act [Chapter 14, Article 15 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

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

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

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

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

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

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

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

## ANNOTATIONS

**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.

#### **1-4-48. Agency registration.**

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

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

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

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

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

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

#### **ANNOTATIONS**

**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 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-delegation 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.**

Sections 1-5-1 through 1-5-29 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.

## **ANNOTATIONS**

**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.**

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

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

#### **ANNOTATIONS**

**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.**

#### **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.**

### **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.**

### **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.**

### **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.**

### **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.**

### **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.**

### **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 lists.**

A. At least once a month, the county clerk shall have made from the state voter file a file maintenance list of additions, deletions and changes, if any, to the county register.

B. One copy of the list shall be stored by the county clerk for at least one year.

C. 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 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 or the voter's telephone number, if prohibited by the voter.

**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.

### ANNOTATIONS

**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.

### 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*, 82 N.M. 445, 483 P.2d 500 (1971).

### **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.**

### **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.**

### **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.**

#### **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.**

#### **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.**

#### **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.**

#### **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.**

### **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; establishment of statewide computerized voter registration system.**

A. The secretary of state shall develop, implement, establish and supervise a statewide computerized voter registration 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 statewide computerized voter registration 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 entering data into the central database; and
- (6) provide a centralized system for each county to enter the precinct to which a voter should be assigned for voting purposes.

**History:** Laws 1989, ch. 298, § 1; 2005, ch. 270, § 38.

### **ANNOTATIONS**

**Cross references.** — For the federal Help America Vote Act of 2002, see 42 J.S.C. § 15301 et seq.

**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 statewide computerized voter registration system;

B. provide to each county clerk the computer software necessary for the use and maintenance of the statewide computerized voter registration system; and

C. adopt such rules and regulations as are necessary to establish and administer the statewide computerized voter registration system and to require deadlines and time limits for the updating of voter files.

**History:** Laws 1989, ch. 298, § 2; 2005, ch. 270, § 39.

#### **ANNOTATIONS**

**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.**

Sections 1-6-1 through 1-6-18 NMSA 1978 may be cited as the "Absent Voter Act".

**History:** 1953 Comp., § 3-6-1, enacted by Laws 1969, ch. 240, § 127.

#### **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.

**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).

## **1-6-2. Definitions.**

As used in the Absent Voter Act [1-6-1 to 1-6-16.2 NMSA 1978]:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member referred to in Paragraphs (1) and (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "election" means a statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections;



C. "electronic ballot" means a paper ballot or ballot face designed to be used on an electronic voting machine to cast votes;

D. "electronic voting machine" means a computer-controlled machine designed to electronically record and tabulate votes cast;

E. "federal office" means the office of president, vice president or senator or representative in congress;

F. "federal qualified elector" means:

(1) an absent uniformed services voter; or

(2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways who:

(1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

(2) is enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel;

H. "overseas voter" means:

(1) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

(2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States; and

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration.

**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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, ch. 327, § 6 repealed former 1-6-2 NMSA 1978, as amended by Laws 1985, ch. 168, § 2, effective June 19, 1987, and enacted a new 1-6-2 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, redesignated Subsections H(1) and H(2) as Subsections H(2) and H(3) and added present Subsection H(1).

**The 1999 amendment,** effective June 18, 1999, deleted "except as modified by the school election law" at the end of Subsection B, added Subsections C and D, and deleted former Subsection E, defining "marksense ballot", and redesignated subsequent subsections accordingly.

**The 1991 amendment,** effective April 2, 1991, rewrote Paragraph (2) of Subsection D which read "an overseas voter"; added Subsection E; redesignated former Subsections E to G as Subsections F to H; in Subsection G, deleted former Paragraph (1) which read "an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved" and redesignated former Paragraphs (2) and (3) as Paragraphs (1) and (2).

### **1-6-3. Right to vote by absentee ballot.**

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot as if he were able to cast his ballot in person at his regular polling place on election day.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office.

**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.

## 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 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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**Presence in county on election day** by otherwise qualified absentee voter does not invalidate his vote. *Kiehne v. Atwood*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 359.

29 C.J.S. Elections § 210(3).

#### **1-6-4. Absentee ballot application; federal qualified elector; overseas voter.**

A. Application by a federal qualified elector or an overseas voter for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of the applicant's residence. The form shall

allow the applicant to receive an absentee ballot for all elections within an election cycle.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed by the secretary of state in accordance with federal law. The form shall identify the applicant and contain information to establish the applicant's qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants who have registered by mail and at that time did not provide acceptable identification. 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.

D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election.

E. A person who willfully and with knowledge and intent to deceive or mislead any voter, precinct 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 an absentee 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.

## ANNOTATIONS

**Cross references.** — For processing of applications, see 1-6-5 NMSA 1978.

**The 2011 amendment**, effective July 1, 2011, provided that a person who violates this section is guilty 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. Federal and state write-in absentee ballot for overseas voters in general elections for state or federal offices.**

A. Except as provided in Subsection C of this section, a federal or state write-in absentee ballot for federal or state offices in a general election shall be processed in the same manner as provided by law for other absentee ballots.

B. In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for all candidates of that political party for federal or state office. Any abbreviation, misspelling or other minor variation in the form of the name of a

candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the overseas voter can be ascertained.

C. A federal or state write-in absentee ballot of an overseas voter shall not be counted if:

- (1) the ballot is submitted from any location in the United States;
- (2) the application of the overseas voter for an absentee ballot is received by the county clerk less than thirty days before the election unless the application is electronically transmitted to the clerk; or
- (3) the absentee ballot of the overseas voter is received by the county clerk later than 7:00 p.m. on election day.

D. A federal qualified elector or overseas voter may transmit, and the county clerk shall accept, an absentee ballot by electronic transmission if:

- (1) the voter signs an affidavit waiving the right of secrecy of voter's ballot;
- (2) the voter transmits the affidavit with the absentee ballot; and
- (3) the transmission of the absentee ballot and affidavit are received by the county clerk no later than 7:00 p.m. on election day.

**History:** 1978 Comp., § 1-6-4.1, enacted by Laws 1987, ch. 327, § 9; 1999, ch. 267, § 7; 2003, ch. 355, § 3.

## ANNOTATIONS

**The 2003 amendment**, effective June 20, 2003, inserted "and state" and "state or" in the section heading and throughout the section; in Subparagraph C(2), inserted "unless the application is electronically transmitted to the clerk"; and added Subsection D.

**The 1999 amendment**, effective June 18, 1999, deleted "New Mexico" preceding "absentee ballot" in Paragraphs C(2) and C(3).

### **1-6-4.2. Write-in absentee ballots; federal qualified electors and overseas voters.**

A. A federal qualified elector or overseas voter residing outside the United States may request a special write-in federal or state absentee ballot, as appropriate, if:

- (1) the person submits with the request a statement that due to military or other contingencies that preclude normal delivery of mail, the person cannot vote on an absentee ballot during the normal absentee voting period; and

(2) the request is made between ninety and one hundred eighty days before the election.

B. The county clerk shall determine the type of write-in absentee ballot for which the voter is eligible and send the ballot to the voter if the conditions of Paragraphs (1) and (2) of Subsection A of this section are met.

**History:** Laws 2003, ch. 355, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 355 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

### **1-6-4.3. Third party agents collecting absentee ballot applications.**

A. A person or organization that is not part of a government agency and that collects absentee ballot applications 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 absentee ballot applications and fails to submit a voter's completed absentee ballot application is guilty of a petty misdemeanor.

C. A person who intentionally alters another voter's completed absentee ballot application is guilty of a fourth degree felony.

**History:** Laws 2005, ch. 270, § 41; 2007, ch. 337, § 9.

### **ANNOTATIONS**

**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 absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant does not have a valid certificate of registration on file in the county 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, an absentee 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. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of the application and, if rejected, shall explain why the application was rejected.

D. 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 and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. 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. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code [Chapter 1 NMSA 1978]. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee 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. If the county clerk establishes an additional alternate voting location near the clerk's office, absentee 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 shall be operated by the county clerk and the county clerk's staff.

G. When marking an absentee 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 absentee. In marking the absentee ballot, the voter may be assisted pursuant to the provisions of Section 1-12-15 NMSA 1978.

H. Absentee ballots shall be sent to applicants not later than on the Friday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided, however, that notice is provided at least ten days before early voting begins.

K. The secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots.

L. It is unlawful to electioneer in the county clerk's office or in any alternate voting location.

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.

## ANNOTATIONS

**Cross references.** — For change of party affiliation, see 1-4-15 and 1-4-16 NMSA 1978.

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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. Absentee ballot distribution to federal qualified electors and overseas voters.**

In the distribution of absentee ballots, federal qualified electors, including members of the uniformed services and overseas voters, shall receive the entire ballot.

History: 1978 Comp., § 1-6-5.1, enacted by Laws 1991, ch. 105, § 10; 2003, ch. 356, § 20; 2009, ch. 251, § 6.

## **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, deleted former Subsection B and after "uniformed services", added "and overseas voters".

**The 2003 amendment**, effective July 1, 2003, rewrote Subsection A, which read "absent uniformed services voters, federal qualified electors, members of the merchant marine and members of the uniformed service shall receive the entire ballot"; and inserted "all other" at the beginning of Subsection B.

## **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*.. For present comparable provisions, see 1-6-5.3 NMSA 1978.

## **1-6-5.3. Repealed.**

### **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. Security; counting and canvassing.**

A. The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; and handling of, registering, counting and canvassing of absentee ballots.

B. As used in Chapter 1, Article 6 NMSA 1978, "registering of absentee ballots" means inserting the paper absentee ballot into an electronic voting system for recording and retention.

**History:** Laws 1999, ch. 267, § 3; 2005, ch. 270, § 44.

### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, in Subsection A, deleted the requirement that the rules include procedures specifying that machines and ballot containers remain locked and that ballots not be removed prior to election day and procedures for sorting of absentee ballots by representative district for canvassing purposes, and provided that the rules provide procedures for registering absentee ballots; and added Subsection B to define "registering of absentee ballots".

### **1-6-5.5. Repealed.**

#### **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 alternate voting locations for 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 in rural areas of the state 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.

#### **ANNOTATIONS**

**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; alternate voting locations.**

A. Commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk.

B. Early voting shall be conducted in each office of the county clerk and at such alternate voting locations as may be established by the county clerk, provided that the county clerk shall establish:

(1) in counties with more than ten thousand voters, not fewer than one alternate voting location;

(2) in counties with more than fifty thousand voters, not fewer than four alternate voting locations; and

(3) in counties with more than two hundred fifty thousand voters, not fewer than fifteen alternate voting locations.

C. Not later than ninety days before each primary and general election, the county clerk shall publicly fix the hours of operation for alternate 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 primary or general election, a county clerk may modify the hours of operation of alternate voting locations with the written approval of the secretary of state. Alternate 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.

D. Each alternate 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.

E. When voting early, 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 identification, the voter shall be allowed to vote after subscribing an application to vote on a form approved by the secretary of state. 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.

## ANNOTATIONS

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

**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. Early voting; Native American early voting locations.**

A county clerk shall provide at least one alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land when requested by the Indian nation, tribe or pueblo in the county; provided that:

A. the Indian nation, tribe or pueblo submits a written request to the county clerk no later than the first Monday in November of each odd-numbered year;

B. the alternate early voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the Indian nation, tribe or pueblo and the county clerk;

C. the county clerk may limit voting to precincts on and near the Indian nation, tribe or pueblo;

D. the location of the alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land conforms to the requirements for alternate early voting locations, except as specified in this section;

E. the county clerk provides federally mandated language translators at the alternate early voting or mobile alternate voting locations;

F. the Indian nation, tribe or pueblo provides the facility and services for the alternate early voting or mobile alternate voting location; and

G. the costs of voting equipment and personnel for the alternate early voting or mobile alternate voting locations on Indian nation, tribal or pueblo land pursuant to this section are reimbursed to the county by the secretary of state.

History: Laws 2009, ch. 251, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 251 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.

### **1-6-6. Absentee ballot register.**

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

- (1) the name and address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;
- (5) the applicant's precinct;



(6) whether the applicant is a voter, a federal qualified elector or an overseas voter;

(7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978; and

(8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location.

B. Absentee ballots shall be sent to applicants beginning twenty-eight days before the election. For each application for an absentee 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 it is sent not later than twenty-two days before the election. Within twenty-two days of election day, the county clerk shall send either the ballot or a notice of rejection to the applicant within twenty-four hours after receipt of the voter's application for an absentee ballot.

C. The absentee 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 absentee ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter precinct 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 the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. Upon request, the county clerk shall transmit to the county chair of each of the major political parties in the county a complete copy of entries made in the absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Saturday immediately following the election.

F. If the county clerk has available the technology to do so, at the request of a candidate or chair of a political party of the county, the county clerk shall electronically transmit to the candidate or chair via the internet the information, when updated, on the absentee ballot register indicating voters who have requested absentee ballots, returned their absentee ballots or voted early in person.

History: 1953 Comp., § 3-6-6, enacted by Laws 1969, ch. 240, § 132; 1975, ch. 255, § 86; 1977, ch. 269, § 5; 1981, ch. 150, § 3; 1987, ch. 249, § 19; 1999, ch. 267, § 9; 2001, ch. 105, § 1; 2003, ch. 356, § 21; 2003, ch. 357, § 3; 2009, ch. 251, § 9.

## ANNOTATIONS

**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.**

## 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. Absentee 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 absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk; provided the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(3) absentee 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 mailing absentee ballot materials.

B. 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. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the absentee ballot. The form shall identify the voter and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

D. The official mailing envelope shall contain a space for the voter to record the voter's name, registration address and year of birth. The envelope shall have a security flap to cover this information.

History: 1953 Comp., § 3-6-8, enacted by Laws 1969, ch. 240, § 134; 1977, ch. 269, § 6; 1983, ch. 232, § 2; 1987, ch. 327, § 11; 1993, ch. 20, § 2; 1997, ch. 201, § 2; 1999, ch. 267, § 11; 2005, ch. 270, § 46; 2008, ch. 59, § 6.

## ANNOTATIONS

**Cross references.** — For the federal Uniformed and Overseas Citizens Absentee Voting Act, see 42 U.S.C.S. § 1973ff et seq.

**The 2008 amendment**, effective May 14, 2008, in Subsection D, deleted "unique identifier" and required the mailing envelope 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.

## **1-6-9. Manner of voting; alternate delivery methods.**

A. Except as provided in Subsection B of this section or Section 1-6-5.7 NMSA 1978, a person voting pursuant to the Absent Voter Act [1-6-1 to 1-6-16.2 NMSA 1978] shall secretly mark the absentee ballot in the manner provided in the Election Code [Chapter 1 NMSA 1978] for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.

B. Federal qualified electors and overseas voters shall either deliver or mail the official mailing envelope or, in accordance with Subsection C of this section, electronically transmit the absentee ballot to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be.

C. A federal qualified elector or overseas voter may return an absentee ballot by electronic transmission if:

- (1) the voter signs a statement under penalty of perjury waiving the right of secrecy of the voter's ballot;
- (2) the voter transmits the statement with the absentee ballot; and
- (3) the transmission of the absentee ballot and statement are received by the county clerk no later than 7:00 p.m. on election day.

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.

## **ANNOTATIONS**

**Cross references.** — For definition of person authorized to administer oaths, see 1-1-17 NMSA 1978.

**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.**

## **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. Preparation of electronic voting machines.**

A. Beginning ten days before an electronic voting machine is issued for absentee voting, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with Section 1-11-6 NMSA 1978.

B. At least one day before an electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and the county chair of each political party represented on the ballot the type and serial number of each voting machine to be used.

History: Laws 1999, ch. 267, § 1; 2011, ch. 137, § 43.

### **ANNOTATIONS**

**The 2011 amendment**, effective July 1, 2011, required county clerks to begin to prepare voting machines in accordance with Section 1-11-6 NMSA 1978 ten days before a machine is issued for absentee voting.

## **1-6-10. Receipt of absentee ballots by clerk.**

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to the absent voter precinct board but shall be preserved by the county clerk 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 contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, overseas voters and federal qualified electors and report the number from each category to the secretary of state.

C. No later than 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of unused ballots and shall publicly destroy in the county clerk's office all such unused ballots or prepare the unused ballots for delivery to precinct boards. The county clerk shall execute a certificate of destruction, which shall include the numbers on the ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state.

History: 1953 Comp., § 3-6-10, enacted by Laws 1969, ch. 240, § 136; 1975, ch. 255, § 88; 1981, ch. 150, § 4; 1983, ch. 232, § 4; 1989, ch. 392, § 13; 1999, ch. 267, § 14; 2005, ch. 270, § 48; 2007, ch. 336, § 10; 2011, ch. 137, § 44.

## 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 2011 amendment**, effective July 1, 2011, eliminated the requirement that county clerks or absent voter precinct boards accept mailing envelopes 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 voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

**History:** Laws 2003, ch. 357, § 5; 2005, ch. 270, § 49.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, required the voter to subscribe the outer envelope of the absentee ballot.

### **1-6-10.2. Repealed.**

## 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 the absentee ballots received prior to the delivery day. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelopes in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for the absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. On election day, the county clerk shall deliver all absentee ballots not yet delivered to the absent voter precinct board but received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk and shall observe the listing of the names on the official mailing envelope in the signature rosters. The special deputy county clerk shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

C. At 7:00 a.m. on the Thursday prior to election day or on the day the absent voter precinct board begins early processing of absentee ballots, the county clerk shall deliver the electronic voting machines used for absentee voting by mail to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall:

- (1) obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine;
- (2) verify the public counter number on the machine; and
- (3) return the receipt to the county clerk for filing.



**History:** 1953 Comp., § 3-6-11, enacted by Laws 1969, ch. 240, § 137; 1971, ch. 317, § 9; 1983, ch. 232, § 5; 1987, ch. 249, § 20; 1999, ch. 267, § 15; 2005, ch. 270, § 50.

## ANNOTATIONS

**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 absentee ballots by absent voter precinct boards.**

A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters or register. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. A lawfully appointed challenger may view the official mailing envelope and may challenge the ballot of any absent 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 precinct board;

(2) the official mailing envelope does not contain a signature; or

(3) the person offering to vote is not a voter as provided in the Election Code [Chapter 1 NMSA 1978].

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 an envelope provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass, the official mailing envelope shall be opened and the vote counted. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

(1) the judges or election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters or register; and

(2) only between 8:00 a.m. and 10:00 p.m. on the five days preceding election day, including Saturday and Sunday, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

F. It is unlawful for a person to disclose the results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

G. Absentee ballots shall be counted and tallied, where possible, on an electronic voting machine as provided in the Election Code.

H. Absent voter precinct polls shall close in accordance with Section 1-6-23 NMSA 1978, and the results of the election shall be certified as prescribed by the secretary of state.

I. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code.

History: 1953 Comp., § 3-6-14, enacted by Laws 1971, ch. 317, § 11; 1975, ch. 255, § 90; 1977, ch. 222, § 12; 1977, ch. 269, § 8; 1983, ch. 232, § 6; 1985, ch. 207, § 5; 1987, ch. 249, § 21; 1989, ch. 392, § 14; 1993, ch. 20, § 5; 1999, ch. 267, § 16; 2003, ch. 354, § 1; 2003, ch. 356, § 22; 2005, ch. 270, § 51; 2007, ch. 336, § 11; 2009, ch. 251, § 11; 2011, ch. 137, § 45.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1971, ch. 317, § 11, repealed former 3-6-14, 1953 Comp., relating to handling absentee ballots by precinct board, and enacted a new 3-16-14, 1953 Comp.

**Cross references.** — For definition of voter, see 1-1-5 NMSA 1978.

For definition of "federal qualified elector" and "overseas voter", see 1-6-2 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 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*, 112 N.M. 42, 811 P.2d 75 (1991).

**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*, 112 N.M. 42, 811 P.2d 75 (1991).

**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. Casting ballot in person prohibited.**

A. No person who has been issued an absentee ballot shall vote in person other than on a replacement absentee ballot.

B. At any time prior to 5:00 p.m. on the Monday immediately preceding the date of the election, a person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the county clerk or at an alternate voting location in the county where the voter is registered to vote, during operational hours, a sworn affidavit stating that the person did not receive or vote the absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. Replacement absentee ballots shall be delivered to the absent voter precinct board for tabulation and shall not be placed in a voting system for tabulation of votes cast at the office of the county clerk or at an alternate voting location.

D. The secretary of state shall prescribe the form of the affidavit and the manner in which the county clerk shall void the first ballot mailed to the applicant.

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.

## ANNOTATIONS

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

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

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

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

- (1) the voter did in fact make application for an absentee ballot; and
- (2) no absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

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

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

History: Laws 1989, ch. 368, § 1; 1991, ch. 105, § 14; 1999, ch. 267, § 19; 2009, ch. 150, § 6.

### ANNOTATIONS

**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 absentee ballots by mail, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote at his regular polling place or alternate location may request in writing that an alternative ballot be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the clerk of the county in which the voter resides to any authorized representative of the voter who through his representative has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, he shall reject the request for an alternative ballot.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the clerk of the county in which the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall only be counted if there is no signature for that voter on the roster of the precinct where that voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The secretary of state shall prescribe the form of alternative ballots and shall distribute an appropriate number of alternative ballots to each county clerk.

**History:** 1978 Comp., § 1-6-16.2, enacted by Laws 1993, ch. 353, § 1; 1999, ch. 267, § 20.

#### **ANNOTATIONS**

**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. Absentee ballots; overseas voters; 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 to overseas voters and federal qualified electors 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 2003, ch. 356, § 8.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 356, § 34 made Laws 2003, ch. 356, § 8 effective July 1, 2003.

### **1-6-19. Short title.**

This act [1-6-19 to 1-6-23 NMSA 1978] may be cited as the "Absent Voter Precinct Act".

**History:** 1953 Comp., § 3-6-18, enacted by Laws 1969, ch. 54, § 1.

### **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.**

### **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 registered mail 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, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The card shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail.

C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.

D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that if a voter from that precinct does not receive an absentee ballot before election day, the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot.

History: Laws 2009, ch. 251, § 1; 2009, ch. 274, § 1; 2011, ch. 137, § 47.

### ANNOTATIONS

**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. Absentee 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.**

### **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.**

### **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 by Laws 1999, ch. 267, § 36.)

## **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 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. 1959-60 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. 1959-60 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).

**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.

### **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. 1955-56 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. 1955-56 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. 1955-56 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. 1955-56 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 within thirty days after its organization and no later than the first Tuesday in April before any election in which it is authorized to participate.



B. 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.

## ANNOTATIONS

**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. 1955-56 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 1-1-9 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 1-1-9 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.

#### **ANNOTATIONS**

**Cross references.** — For qualified political party, see 1-7-2 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*, 79 N.M. 578, 446 P.2d 445 (1968)(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*, 50 N.M. 23, 168 P.2d 100 (1946).

**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 County Comm'rs*, 46 N.M. 472, 131 P.2d 278 (1942).

**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 County Comm'rs*, 46 N.M. 472, 131 P.2d 278 (1942).

**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 County Comm'rs*, 46 N.M. 472, 131 P.2d 278 (1942).

**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, the public regulation commission, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chair and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the twenty-first day following the primary election in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one 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:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or 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-first day following the primary election in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one 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:

- (1) in the county for countywide offices; and
- (2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

D. Persons certified as nominees shall be members of that party before the day the governor issues the primary election proclamation.

E. No voter shall sign a petition prescribed by this section for more persons than the number of minor party 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.

## 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 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 certified", 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 chairman and the governing board of the state party shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, public regulation commission, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county;

B. the county chairman and the governing board of the county party shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county; and

C. the names of such nominees shall be filed in the same time and manner prescribed by the Election Code [Chapter 1 NMSA 1978] for convention-designated nominees of minor political parties, and each list of names certified shall be accompanied by the petition containing a list of signatures and addresses of voters as prescribed for convention-designated nominees.

**History:** 1953 Comp., § 3-8-3, enacted by Laws 1969, ch. 240, § 153; 1975, ch. 255, § 101; 1998, ch. 36, § 2.

## ANNOTATIONS

**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*, 83 N.M. 303, 491 P.2d 520 (1971).

**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*, 83 N.M. 303, 491 P.2d 520 (1971).

**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*, 83 N.M. 303, 491 P.2d 520 (1971).

**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*, 83 N.M. 303, 491 P.2d 520 (1971).

**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.

#### **1-8-4. Secretary of state; certification of nominees; minor political party.**

Upon receipt of certificates of nomination of any minor political party, and no later than 5:00 p.m. on the thirty-fifth day following the filing date, the secretary of state shall:

A. 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;

B. determine whether all the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with and that the petition and list of signatures and addresses of voters are valid and comply with law; and

C. if such determinations are answered in the affirmative, 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.

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.

#### **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 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, 79 N.M. 578, 446 P.2d 445 (1968).

**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, 79 N.M. 578, 446 P.2d 445 (1968) (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*, 44 N.M. 599, 106 P.2d 1093 (1940).

**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*, 48 N.M. 485, 153 P.2d 127 (1944) (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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 56 N.M. 529, 246 P.2d 201 (1952).

### **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; or

(2) the resignation or death of a person holding a public office after the date for filing a declaration of candidacy or after the date required for certification as a convention-designated nominee, and before the primary election, when such office was not included in the governor's 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. The name of the person to fill the vacancy on the general election ballot shall be filed with the proper filing officer within fifteen days after the primary election and when so filed, it shall be placed on the general election ballot as the party's nominee for such office.

**History:** 1953 Comp., § 3-8-7, enacted by Laws 1969, ch. 240, § 157; 1975, ch. 295, § 2; 1979, ch. 378, § 5.

## 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.

**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, 86 N.M. 231, 522 P.2d 83 (1974).

**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. 1949-50 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 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 governor's 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 governor's 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. Appointments to fill vacancies in the list of a party's nominees shall be made and filed at least fifty-six days prior to the general election.

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., § 3-8-8, enacted by Laws 1969, ch. 240, § 158; 1975, ch. 255, § 103; 1979, ch. 378, § 6; 1995, ch. 124, § 11; 2011, ch. 137, § 51.

## ANNOTATIONS

**Cross references.** — For printing of ballots, time of, see 1-10-4 and 1-10-5 NMSA 1978.

**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*, 101 N.M. 703, 688 P.2d 21 (1984).

**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*, 86 N.M. 231, 522 P.2d 83 (1974).

**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*, 56 N.M. 652, 248 P.2d 210 (1952)(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 County Comm'rs*, 46 N.M. 472, 131 P.2d 278 (1942).

**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 County Comm'rs*, 46 N.M. 472, 131 P.2d 278 (1942).

**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. 78-5.

**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. 78-5.

**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. 1947-48 Op. Att'y Gen. No. 48-5173 (opinion rendered under former law).

**Procedure to follow in filling vacancies.** — In placing names of candidates upon the ballot when a vacancy has occurred after the ballots have been printed and before they have been delivered to the judges of the election, the chairman and secretary of the county central committee of the party whose candidates have withdrawn shall certify to the county clerk that vacancies exist in the offices named and that other candidates (naming them) have been selected to fill such vacancy. When such certificate is filed with the county clerk, it is his duty to cause stickers with names of substituted

candidates printed thereon to be pasted on the official ballots in the proper places. 1933-34 Op. Att'y Gen. 164 (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. General election; withdrawal of candidates.**

No candidate shall withdraw from a general election unless the candidate withdraws at least sixty-three days prior to that election and the candidate files a signed and notarized statement of withdrawal with the proper filing officer.

History: 1953 Comp., § 3-8-8.1, enacted by Laws 1975, ch. 255, § 104; 2007, ch. 274, § 1; 2011, ch. 137, § 52.

#### **ANNOTATIONS**

**The 2011 amendment**, effective July 1, 2011, required that 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.

### **1-8-10. Primary Election Law; short title.**

Sections 1-8-10 through 1-8-52 NMSA 1978 may be cited as the "Primary Election Law".

**History:** 1953 Comp., § 3-8-9, enacted by Laws 1969, ch. 240, § 159.

#### **ANNOTATIONS**

**Compiler's notes.** — Sections 1-8-45 to 1-8-52 NMSA 1978 (3-8-27.1 to 3-8-27.8, 1953 Comp.) were enacted by Laws 1977, ch. 322, as part of the Primary Election Law.

**Cross references.** — For person not allowed to vote because his party affiliation is not designated on original certificate of registration, see 1-12-7 NMSA 1978.

For person not allowed to vote for the candidate of any party other than the party designated on his original certificate, see 1-12-7 NMSA 1978.

For campaign practices in primary elections, see 1-19-1 NMSA 1978.



**Legislature adopted construction prior to amendment.** — Since Primary Election Code amendment of 1949 was in substantially same language as original 1938 enactment, it constituted a continuation of original statute, and legislature would be regarded as having adopted construction placed upon act before amendment. *Granito v. Grace*, 56 N.M. 652, 248 P.2d 210 (1952).

**Convicted election official could not question constitutionality of primary law.** — Election official convicted of permitting fraudulent voting and making false entries in pollbook could not question constitutionality of former primary law because he was not prejudiced by alleged restraints. *State v. Lucero*, 48 N.M. 294, 150 P.2d 119 (1944).

### **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.**

The governor shall issue a public proclamation calling a primary election to be held in each county and precinct of the state on the date prescribed by the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978]. The proclamation shall be filed with 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.

#### **ANNOTATIONS**

**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, 86 N.M. 231, 522 P.2d 83 (1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 29 C.J.S. Elections § 117.

### **1-8-13. Primary Election Law; contents of proclamation.**

The proclamation calling a primary election shall contain:

- A. the names of the major political parties participating in the primary election;
- B. the offices 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 of the proclamation but prior to the date of the primary election, the proclamation shall conform 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, state board of education, public regulation commission or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;
- D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;
- E. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;
- F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates; and
- 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.

As used in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], "statewide office" means any office voted on by all the voters of the state.

**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.

## ANNOTATIONS

**Cross references.** — For appeals of nominating petitions, see Rule 12-603 NMRA.

**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. 78-5.

### **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; and

B. send by certified mail an authenticated copy of the proclamation to each county clerk.

**History:** 1953 Comp., § 3-8-13, enacted by Laws 1969, ch. 240, § 163.

## ANNOTATIONS

**Publication costs.** — The secretary of state should pay for the publications made from that office. 1943-44 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. 1943-44 Op. Att'y Gen. No. 43-4344 (opinion rendered under former law).

### **1-8-16. Primary Election Law; proclamation; amendment.**

The governor may amend the proclamation between the time of its issuance and the first Tuesday in March to include a newly created public office that is capable by law of being filled at the next succeeding general election, or any existing office becoming vacant by removal, resignation or death, 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.

#### **ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, required that amendments of a proclamation to include a newly created public office be amended not later than 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, 86 N.M. 231, 522 P.2d 83 (1974).

**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, 86 N.M. 231, 522 P.2d 83 (1974).

## **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. 1963-64 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. 1943-44 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 his name printed on the primary election ballot unless his record of voter registration shows:

(1) his affiliation with that political party on the date of the governor's proclamation for the primary election; and

(2) his residence in the district of the office for which he is a candidate on the date of the governor's proclamation for the primary election or in the case of a person seeking the office of United States senator or United States representative, his residence within New Mexico on the date of the governor's proclamation for the primary election.

B. Any voter may challenge the candidacy of any person seeking nomination by a political party for the reason that he 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.

### **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.

**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. Cleveland*, 48 N.M. 226, 149 P.2d 120 (1944).

**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 office listed in Section 1-8-13C shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer.

C. Candidates for county office shall have their names placed on the primary election ballot by filing declarations of candidacy and paying filing fees or filing the proper paupers' statements at the time of filing declarations of candidacy with the proper filing officer.



History: 1978 Comp., § 1-8-21, enacted by Laws 1996, ch. 20, § 3; 2009, ch. 202, § 1.

## 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 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. 1959-60 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. 1959-60 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. 1959-60 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. Proper filing officer; declaration of candidacy; nominating petitions; withdrawal of candidacy.**

For the purposes of Chapter 1, Articles 8 and 12 NMSA 1978, the proper filing officer is:

A. the secretary of state for the offices of:

(1) United States senator;

- (2) United States representative;
  - (3) all state elective offices;
  - (4) legislative offices elected from multicounty districts;
  - (5) all public regulation commission districts;
  - (6) all elective judicial offices in the judicial department, except magistrates;
- and
- (7) all offices representing a district composed of more than one county; and

B. the county clerk for the offices of:

- (1) all elective county offices;
- (2) magistrates; and
- (3) legislative offices elected from a district located wholly within one county or that is composed of only one county.

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.

### ANNOTATIONS

**The 2011 amendment**, effective July 1, 2011, identified the proper filing officers for purposes of nominations and primary elections and for conducting elections.

**The 1998 amendment**, effective March 6, 1998, added present Paragraph A(5), redesignated former Paragraphs A(5) and A(6) as Paragraphs A(6) and A(7) and substituted "that" for "which" in Paragraph B(3).

**Method of delivery to secretary of state.** — A candidate for any political party participating in the primary for any office must file a declaration of candidacy and nominating petitions and (if the office is one filled by the state at large or districts comprising more than one county), the filing is made by handing said items to the secretary of state in person, by representative, by mail or otherwise, and if in order the secretary of state shall file same regardless of how they were delivered. 1939-40 Op. Att'y Gen. 147 (opinion rendered under former law).

**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. Declarations of candidacy for retention for all affected judicial offices shall be filed with the proper filing officer between the hours of 9:00 a.m. and 5:00 p.m. on the twenty-first day after the primary election.

E. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition, if required, and the certificate of registration of the candidate on file are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot. The proper filing officer shall mail the notice no later than 5:00 p.m. on the Tuesday following the filing date.

F. If a 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 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.

## 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 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, the candidate shall submit substantially the following form:

### "DECLARATION OF CANDIDACY

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 governor's proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of ..... at the primary election to be held on the date set by law for this year, and if the office be that of a member of the legislature or that of a member of the state board of education, 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 ....., 19 .....

.....  
(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.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1973, ch. 228, § 3, repealed former 3-8-24, 1953 Comp., relating to declaration of candidacy and form under Primary Election Law, and enacted a new 3-8-24, 1953 Comp.

**1993 amendments.** — Laws 1993, ch. 55, § 5 enacted an amendment to this section, which 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. Laws 1993, ch. 314, § 46 and Laws 1993, ch. 316, § 46, both effective June 18, 1993, enacted identical amendments

to this section that substituted "certificate" for "affidavit" throughout the section. The section was set out as amended by Laws 1993, ch. 316, § 46. See 12-1-8 NMSA 1978.

**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*, 104 N.M. 265, 720 P.2d 300 (1986).

**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. 1957-58 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. 1957-58 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. 1957-58 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. 1955-56 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. 1955-56 Op. Att'y Gen. No. 56-6399.

**Section not applicable** to person who previously failed or declined to show party affiliation. 1943-44 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<br>signature) | (name printed<br>as registered) | (address as<br>registered) | (city or<br>zip code)   |
| 2. | _____                | _____                           | _____                      | _____                   |
|    | (usual<br>signature) | (name printed<br>as registered) | (address as<br>registered) | (city or<br>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.

**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, 101 N.M. 260, 680 P.2d 977 (1984) (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, 87 N.M. 79, 529 P.2d 745 (1974).

**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, 87 N.M. 79, 529 P.2d 745 (1974).

**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*, 87 N.M. 79, 529 P.2d 745 (1974).

**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. 1951-52 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. 1951-52 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. Primary Election Law; nominating petition; 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 person signing:

(1) was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition;

(2) failed to provide information required by the nominating petition;

(3) 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;

(4) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(5) 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

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

D. The following information shall be listed in the appropriate space at the top of the nominating petition before the petition has been signed by any voter: the party affiliation of voters signing the petition, the candidate's name, the candidate's address, the candidate's county of residence and the office sought by the candidate, which shall include the district or division of the office sought, if applicable. A nominating petition, including all signatures on the petition page, shall be invalid if any of the preceding information is not listed before the petition is signed by a voter or if any of the preceding information is altered.

E. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraphs (1) and (5) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties.

History: 1953 Comp., § 3-8-24.2, enacted by Laws 1973, ch. 228, § 5; 1975, ch. 255, § 109; 1975, ch. 295, § 16; 1979, ch. 378, § 7; 1985, ch. 207, § 8; 1993, ch. 314, § 47; 1993, ch. 316, § 47; 1999, ch. 267, § 27; 2011, ch. 137, § 58.

## ANNOTATIONS

**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*, 101 N.M. 260, 680 P.2d 977 (1984)(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. 1951-52 Op. Att'y Gen. No. 52-5486 (opinion rendered under former law).

### **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 three percent of the total vote of the candidate's party in the district or division, or the following number of voters, whichever is greater: for metropolitan court and magistrate courts, ten voters; for the public regulation commission, fifty voters; for the public education commission, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A candidate who fails to receive the preprimary convention designation that the candidate sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office the candidate seeks, and file a new declaration of candidacy and nominating petitions for the office for which the candidate failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which the candidate failed to receive the designation or on the date all declarations of candidacy and nominating petitions are due pursuant to the provisions of the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], whichever is later.

History: 1953 Comp., § 3-8-24.4, enacted by Laws 1973, ch. 228, § 7; 1975, ch. 255, § 110; Laws 1975, ch. 295, § 17; 1979, ch. 378, § 9, 1982, ch. 1, § 2; Laws 1985, ch. 2, § 6; 1985, ch. 206, § 2; 1987, ch. 216, § 1; 1993, ch. 55, § 7; 1994, ch. 92, § 5; 1995, ch. 124, § 16; 1998, ch. 36, § 5; 2007, ch. 337, § 10; 2008, ch. 57, § 1.

#### **ANNOTATIONS**

**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*, 87 N.M. 79, 529 P.2d 745 (1974).

**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*, 87 N.M. 79, 529 P.2d 745 (1974).

**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*, 87 N.M. 79, 529 P.2d 745 (1974).

**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*, 101 N.M. 703, 688 P.2d 21 (1984).

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

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

C. A person desiring to be a write-in candidate for one of the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer

a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the third Tuesday in March.

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

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

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

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

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

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

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.

## ANNOTATIONS

**Cross references.** — For write-in candidates in general election, see 1-12-19.1 NMSA 1978.

**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*, 87 N.M. 79, 529 P.2d 745 (1974)(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. Primary Election Law; filing fee.**

The filing fee in the primary election for any county office shall be fifty dollars (\$50.00), which shall be paid at the time of the filing of the declaration of candidacy for nomination by a political party.

**History:** 1953 Comp., § 3-8-26, enacted by Laws 1973, ch. 228, § 11; 1974, ch. 25, § 1; 1977, ch. 222, § 22; 2011, ch. 137, § 60.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1973, ch. 228, § 11, repealed former 3-8-26, 1953 Comp., relating to filing fees under Primary Election Law, and enacted a new 3-8-26, 1953 Comp.

**The 2011 amendment**, effective July 1, 2011, eliminated the five dollar filing fee for candidates for the office of county councilman, county clerk, county assessor and sheriff.

**Fee of 6% of first year's salary unconstitutional.** — Under former version of this section, filing fee amounting to 6% of the first year's salary of the office was unconstitutional as applied to the office of United States senator, since the requirement

prevented persons otherwise qualified but unable to pay such a fee from becoming candidates for that office and denied voters the opportunity to vote for such persons. *Dillon v. Fiorina*, 340 F. Supp. 729 (D.N.M. 1972).

**No fee required when vacancy duly filled after primary.** — The obligation of any candidate to pay a filing fee is one imposed entirely by statute. Hence, when the vacancy occurred prior to the primary election but when the designation of a candidate was duly made pursuant to law subsequent to the primary election, no filing fee is required to be paid or collected by the designee where the original candidate has died and new candidate is designated. 1957-58 Op. Att'y Gen. No. 58-125.

**Means of considering declaration accompanied by fee.** — This section does not specifically point to the medium which may be employed in order that the declaration of candidacy be considered "accompanied by a fee." 1955-56 Op. Att'y Gen. No. 56-6397.

**Legislature contemplated moneys may be received** by check or draft or otherwise, and the receipt of moneys by a state official may not always necessarily be in cash. 1955-56 Op. Att'y Gen. No. 56-6397.

**Candidate chooses method of payment.** — The secretary of state and county clerks must accept the tender of the fee in cash or personal check as the candidate chooses. 1955-56 Op. Att'y Gen. No. 56-6397.

**Clerk may not demand method of payment.** — If the "fee" must be tendered in cash, then the secretary of state and county clerks have no authority to accept cashier's or personal checks. Conversely, if the statute is broad enough to permit tender of the "fee" by personal check then the secretary of state and county clerks have no authority to demand that the tender be in cash or even by cashier's check. 1955-56 Op. Att'y Gen. No. 56-6397.

**No return of fee upon withdrawal before election.** — The filing fee cannot be returned upon one's withdrawal of candidacy before the election. 1941-42 Op. Att'y Gen. No. 42-4132.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and effect of statutes exacting filing fees from candidates for public office, 89 A.L.R.2d 864.

## **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. Primary Election Law; order of candidates on ballot.**

A. Candidates designated and certified by state convention for a statewide office or the office of United States representative shall be placed on the primary election ballot in the order of the vote received at the state convention. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote, and so on until all the candidates designated for that office have been placed on the ballot, provided that the names of two or more candidates receiving an equal number of votes for designation by convention for the same office shall be placed on the primary ballot in the order determined by lot. Names of candidates for statewide office or the office of United States representative who do not receive preprimary convention designation but who are qualified candidates by declaration of candidacy shall be placed on the ballot as determined by lot following convention designated candidates.

B. The names of candidates for any other office in the primary election who are candidates by declaration of candidacy shall be arranged on the ballot as determined by lot.

C. The determination by lot shall be made immediately following the closing time for filing declarations of candidacy and all candidates or their agents shall be entitled to be present at such time.

D. The order of preference for position on the ballot shall be first, the top name position on the left-hand column for each office, and thereafter, consecutively down each name position in that column to the last name position. If the number of candidates filing for the office so requires, the order of preference shall continue consecutively from the top name position on the left-hand column to the top name position on the right-hand column, thence to the second name position on the left-hand column, then to the second name position on the right-hand column and thereafter continuing in the same manner until all the candidates are positioned on the ballot.

**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.

### **ANNOTATIONS**

**Cross references.** — For order of offices on primary and general election ballots, see 1-10-8 NMSA 1978.

**The 1994 amendment**, effective January 31, 1994, substituted Subsections A through C for former Subsections A and B, relating to the same subject matter, and redesignated former Subsection C as Subsection D.

**Candidates to appear in order in which 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. 1963-64 Op. Att'y Gen. No. 64-18 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballot of names of candidates, 78 A.L.R. 398.

Form in which candidate's name may appear on ballot, 93 A.L.R. 911.

Defeated candidate for nomination, construction and application of statute prohibiting printing of name of, on official ballot, 143 A.L.R. 608.

Official ballots or ballots conforming to requirements, failure to make available as affecting validity of election of public officer, 165 A.L.R. 1263.

Validity and effect of statutes exacting filing fees from candidates for public office, 89 A.L.R.2d 864.

29 C.J.S. Elections § 118(3).

## **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. 1955-56 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. 1955-56 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. 1955-56 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. 1949-50 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 special elections; definition.**

A. As used in the Election Code [Chapter 1 NMSA 1978], 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 governor's proclamation for the primary election and, if applicable, shows residence on the date of the governor's proclamation for the primary election 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 governor's proclamation for the primary election;

(b) who will be a resident of New Mexico when elected; and

(c) who has complied with the nomination procedures set forth in the Election Code for independent candidates; or

(3) is a candidate for the office of president or vice president who:

(a) has complied with the nomination procedures set forth in the Election Code for independent candidates; and

(b) was not a major party candidate for the same office on the primary election ballot.

B. No person shall become an independent candidate for any office, and the person's name shall not be printed on the general election ballot, unless the person complies with the requirements of this section.

C. Any voter may challenge the candidacy of any person seeking to become an independent candidate for any office for the reason that the person does not meet the requirements of this section or because the nominating petitions, if required, do not meet the requirements of Section 1-8-31 NMSA 1978 by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith.

History: 1953 Comp., § 3-8-27.1, enacted by Laws 1977, ch. 322, § 1; 1981, ch. 147, § 6; 1993, ch. 314, § 49; 1993, ch. 316, § 49; 2011, ch. 137, § 62.

## ANNOTATIONS

**Compiler's notes.** — Sections 1-8-45 to 1-8-52 NMSA 1978 (3-8-27.1 to 3-8-27.8, 1953 Comp.) were enacted by Laws 1977, ch. 322, as part of the Primary Election Law.

**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.

## **ANNOTATIONS**

**Cross references.** — For withdrawal of candidate from general election, see 1-8-9 NMSA 1978.

### **1-8-48. Independent candidates for general or United States representative special 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 governor's proclamation for the primary election 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)

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(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.

### ANNOTATIONS

**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 special 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 at least three percent of the total number of votes cast in the state.

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 three 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 three percent of the total number of votes cast in the district.

E. Nominating petitions for an independent candidate for a member of the legislature, public regulation commission, district judge, district attorney, member of the state board of education, magistrate or county office shall be signed by a number of voters equal to at least three percent of the total number of votes cast in the district, division or county, as the case may be.

F. A voter shall not sign a petition for an independent candidate as provided in this section if he 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.

### **ANNOTATIONS**

**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-first 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-first 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.

### **ANNOTATIONS**

**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.**

#### **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.**

#### **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.**

#### **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.**

#### **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.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-55 NMSA 1978 as 1-15A-4 NMSA 1978 effective July 1, 2011.

### **1-8-56. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-56 NMSA 1978 as 1-15A-5 NMSA 1978 effective July 1, 2011.

### **1-8-57. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-57 NMSA 1978 as 1-15A-6 NMSA 1978 effective July 1, 2011.

### **1-8-58. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-58 NMSA 1978 as 1-15A-7 NMSA 1978 effective July 1, 2011.

### **1-8-59. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-59 NMSA 1978 as 1-15A-8 NMSA 1978 effective July 1, 2011.

### **1-8-60. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 compiled former 1-8-60 NMSA 1978 as 1-15A-9 NMSA 1978 effective July 1, 2011.

### **1-8-61. Recompiled.**

## **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-61 NMSA 1978 as 1-15A-10 NMSA 1978 effective July 1, 2011.

## **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.**

### **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-63 NMSA 1978 as 1-15A-11 NMSA 1978 effective July 1, 2011.

## **1-8-64. Repealed.**

### **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*..

## **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 web site. Only voting systems certified by the secretary of state and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] shall be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or

to mark ballots at a polling location; equipment that is not an integral part of a voting system but that can be used as an adjunct to it is considered to be a component of the system.

History: 1953 Comp., § 3-9-2, enacted by Laws 1969, ch. 240, § 184; 1976 (S.S.), ch. 5, § 1; 2001, ch. 233, § 1; 2010, ch. 28, § 10; 2011, ch. 137, § 69.

## ANNOTATIONS

**Cross references.** — For unlawful opening of voting machines, see 1-20-5 NMSA 1978.

**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. 1951-52 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.

## 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.**

#### **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.**

#### **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.**

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 voting system for use in each polling location in the general and primary elections.

C. 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.

## ANNOTATIONS

**Cross references.** — For provision as to number of voters a polling place is to accommodate, see 1-3-1 NMSA 1978.

**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. 1961-62 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. 1953-54 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. 1953-54 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. 1951-52 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 [Chapter 1 NMSA 1978] 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. 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.

## ANNOTATIONS

**Cross references.** — For electronic voting system revolving fund, see 1-9-19 NMSA 1978.

**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.**

A. All voting systems used in elections covered by the Election Code [Chapter 1 NMSA 1978] 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.

History: Laws 2005, ch. 270, § 56; 2006, ch. 43, § 2; 2010, ch. 28, § 13.

## ANNOTATIONS

**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 and shall be completed within six months of the date on which the secretary of state orders testing to begin; 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.

#### **ANNOTATIONS**

**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 [Chapter 1 NMSA 1978] or meet federal election standards, the secretary of state shall undertake an investigation to determine if the voting system should continue to be certified for use in the state. Tests and inspections conducted pursuant to this section shall commence upon the order of the secretary of state and shall follow the procedures in Section 1-9-14 NMSA 1978. A voting system that does not comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission shall be decertified for use in this state.

History: Laws 2010, ch. 28, § 2.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

### **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-four inches long, in dual columns and printed on both sides;

B. accept a ballot in any orientation when inserted by a voter;

C. have the capability to reject a ballot on which a voter has made more than the allowable number of selections in any contest;

D. be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction; and

E. be able to read a single ballot with at least four hundred twenty voting positions.

History: Laws 2010, ch. 28, § 8.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2010, ch. 28, § 24 contained an emergency clause and was approved March 3, 2010.

### **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.**

#### **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 care of machines obtained under lease-purchase contract, see 1-9-8 NMSA 1978.

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 [Chapter 1 NMSA 1978] and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

B. Any person who has a voting system that is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have the equipment examined and tested for certification. At the time application is made for initial certification, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the voting system to ensure that it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of voting systems and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more polling places in any state or local government election, provided that such field tests shall be conducted at no cost to the state or any local government. These tests and inspections shall be completed within six months of the date of application.

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 web site. The secretary of state shall accept public comment during the twenty-one days following the filing of the written report.

D. Following the period of public comment, the secretary of state shall submit the filed reports and any public comments for consideration by the voting system certification committee. The voting system certification committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

E. The voting system certification committee shall recommend that a voting system be certified for use in the state only if it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

F. If the voting system certification committee report finds that the voting system does not comply with all requirements in the Election Code or does not meet federal election standards, the secretary of state shall allow thirty days for an appeal of the findings to be filed or for the deficiencies to be corrected, following which the secretary

of state shall report back to the voting system certification committee with a written final report.

G. The voting system certification committee shall reconvene to consider the final report of the secretary of state and shall make final recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

H. If the voting system certification committee recommends that the voting system is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the equipment for use in elections in this state.

I. If the voting system certification committee does not recommend that the voting system for recording and tabulating votes is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall deny the application or decertify the equipment for use in elections in this state.

History: Laws 1983, ch. 226, § 1; 1989, ch. 297, § 1; 1991, ch. 106, § 7; 2001, ch. 233, § 9; 2010, ch. 28, § 17.

## ANNOTATIONS

**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.**

### **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.**

### **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.**

### **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. Not less than fifty-six days before the primary election, each proper filing officer shall group all candidates for each party by themselves and prepare in writing a separate ballot for each party and certify the candidates for each ballot position to the printer.

B. Not less than fifty-six days before the general election, each proper filing officer shall prepare in writing the ballot containing the name of each candidate that has been certified and filed as the nominee of a party and any 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.

C. Upon request of the county chair of a political party participating in the election, the county clerk shall furnish proof sheets or a copy of the proof sheets of the 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.

## ANNOTATIONS

**Cross references.** — For position of names on ballots, see 1-8-59, 1-10-3, 1-10-8 and 1-10-8.1 NMSA 1978.

**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.

### **1-10-5. Ballots; printing.**

The county clerk shall have access to sufficient ballots to send to federal qualified electors and overseas voters no later than the last business day before the forty-fifth day prior to a primary or general election, as required by federal law. All other ballots shall be printed and 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.

## ANNOTATIONS

**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. 1953-54 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; candidates with similar names.**

In the preparation of ballots:

A. 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 governor issues the proclamation for the primary election; and

B. if it appears that the names of two or more candidates for any office to be voted on at the election are the same or are so similar as to tend to confuse the voter as to the candidates' identities, the occupation and post office address of each such candidate shall be printed immediately under the candidate's name on the ballot.

**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.

### **ANNOTATIONS**

**Cross references.** — For position of names on ballots, see 1-8-59, 1-10-3, 1-10-8 and 1-10-8.1 NMSA 1978.

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 52 and Laws 1993, ch. 316, § 52, both effective June 18, 1993, and both approved on April 8, 1993, which substituted "certificate" for "affidavit" in Subsection A and made a minor stylistic change in Subsection B. The section was set out as amended by Laws 1993, ch. 316, § 52. See 12-1-8 NMSA 1978.

**Purpose of "similar name" statute** is to prevent voter confusion. 1963-64 Op. Att'y Gen. No. 64-25.

**Section is remedial in nature** and should receive liberal construction. 1963-64 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. 1963-64 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. 1963-64 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. 1963-64 Op. Att'y Gen. No. 64-25.

### **1-10-7. Ballots; name shall appear but once.**

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, no candidate's name shall appear more than once on the ballot. 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.

**History:** 1953 Comp., § 3-10-11.7, enacted by Laws 1977, ch. 222, § 30; 1979, ch. 378, § 13; 1981, ch. 143, § 3.

#### **ANNOTATIONS**

**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.**

#### **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; primary and general elections; order of offices.**

The ballot used in the primary and general elections shall contain, when applicable, the offices to be voted on in the following order:

- A. president and vice president;
- B. United States senator;
- C. United States representative;
- D. candidates for state offices to be voted on at large, in order prescribed by the secretary of state;
- E. state senator;
- F. state representative;
- G. other district candidates, in the order prescribed by the secretary of state;
- H. metropolitan and magistrate judges;
- I. county commissioners;
- J. county clerk;
- K. county treasurer;
- L. county assessor;
- M. county sheriff;
- N. probate judge; and
- O. other issues as prescribed by the secretary of state.

History: 1953 Comp., § 3-10-11.8, enacted by Laws 1977, ch. 222, § 31; 1991, ch. 105, § 17; 2011, ch. 56, § 1.

### **ANNOTATIONS**

**Cross references.** — For order of candidates on ballot for primary, see 1-8-43 NMSA 1978.

**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. 1963-64 Op. Att'y Gen. No. 64-18 (opinion rendered under former law).

### **1-10-8.1. General election; party position on ballot.**

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

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

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

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

History: Laws 1981, ch. 166, § 1; 1985, ch. 207, § 22; 1991, ch. 105, § 18; 2009, ch. 150, § 13.

### **ANNOTATIONS**

**Cross references.** — For position of names and offices on ballots, see 1-10-3 and 1-10-8 NMSA 1978.

For errors and omissions, see 1-10-9 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after "position on the", deleted "voting machines, emergency paper ballots and absentee"; deleted former Subsection B, which provided for the order of preference of major political parties; deleted former Subsection C, which provided for the preference of minor political parties; deleted former Subsection D, which provided that when lever voting machines



are used, the sample ballot must reflect the actual positioning of parties on the voting machine; in Subsection B, after "printed on the ballot", deleted "sheet or ballot card"; and in Subsection C, after "When", deleted "emergency"; after "paper ballots", deleted "and absentee ballots"; and after "they appear on", deleted "the voting machine" and added "all ballots".

**The 1991 amendment**, effective April 2, 1991, substituted "position" for "rotation" in the section heading.

**Compiler's notes.** — *Emmons v. Hooper*, No. Civ.-78-404C (D.N.M., filed July 6, 1979), declared that the former practice by the secretary of state of placing the majority party's candidates on the top line of the ballot in every general election discriminated against candidates of nonmajority parties and against those voting for such candidates, thus violating the fourteenth amendment of the United States Constitution. *Emmons v. Hooper*, No. Civ.-78-404C (D.N.M., filed July 27, 1979), found the secretary of state's proposed plan, used until the enactment of this section, to eliminate intentional or purposeful discrimination sufficiently corrective.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 300 et seq.

29 C.J.S. Elections §§ 158, 159.

### **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. At the time of printing the official ballots, the county clerk shall cause to be printed in both English and Spanish a number of sample ballots in a quantity equal to ten percent of the number of voters in each precinct.

B. The sample ballots shall be the same in all respects as the official ballots, except that 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. Sample ballots shall be made available in reasonable quantities to all interested persons for distribution to the voters within the appropriate precincts.

D. Nothing in this section shall preclude any person from having printed at his own expense sample ballots.

**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.

### **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.

### 1-10-13. Paper ballots; write-in candidates.

When a write-in candidate has been certified pursuant to the Election Code [Chapter 1 NMSA 1978], a space for entering the name of the write-in candidate shall be clearly designated by the use of the heading "Write-in Candidate" after the listing of other candidates for that office.

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.

### 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 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 by Laws 1994, ch. 3, § 2.)

### **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*.. For present comparable provisions, see 1-8-43 NMSA 1978.

## **ARTICLE 11 Notices, Preparation for Elections and Election Supplies**

### **1-11-1. Notice of election; proclamation.**

The county clerk shall, at least twelve days prior to any county or statewide election, give notice of the election by proclamation.

**History:** 1953 Comp., § 3-11-1, enacted by Laws 1969, ch. 240, § 211.

### **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.

**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, 23 N.M. 205, 167 P. 715 (1917).

**Constitutional amendments must be set forth in full in election proclamation** published by the board of county commissioners. 1955-56 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. Contents of proclamation.**

The proclamation shall:

- A. give notice of the election;
- B. set forth the purpose of the election;
- C. list the offices to be filled;
- D. list all properly certified candidates and their party affiliation for each of the offices to be filled;
- E. list all properly certified candidates for judicial retention;
- F. list all properly declared write-in candidates for each of the offices to be filled;
- G. list the names of all precinct board members, the polling location and the precinct, if applicable, to which they are appointed; and

H. give the address or location of each polling place and alternate voting location where the election is to be held.

History: 1953 Comp., § 3-11-2, enacted by Laws 1969, ch. 240, § 212; 1991, ch. 105, § 19; 2011, ch. 137, § 73.

## ANNOTATIONS

**Cross references.** — For contents of notice when precincts have been consolidated, see 1-3-4 NMSA 1978.

**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. 1941-42 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. 1949-50 Op. Att'y Gen. No. 49-5244.

**Provisions do not apply** to municipal board of education elections or to city elections. 1943-44 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. Proclamation; publication; posting.**

A. The proclamation shall be published at least once, not more than twelve nor less than seven days before election day.

B. The proclamation shall be published in a legal newspaper as defined by Section 14-11-2 NMSA 1978.

C. If no legal newspaper is published in the county, the proclamation shall be published in a legal newspaper of general circulation in the county.

D. A copy of the proclamation shall be posted in a public building.

E. The proclamation shall be printed in English and Spanish.

F. The proclamation 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.

## 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 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. 1955-56 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. Proclamation; notice of errors and omissions.**

A. The county clerk may amend the proclamation 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 proclamation, 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.

## **1-11-5. Voting device; preparation; certification.**

Forty-two days before the election, the county clerk may begin to prepare, inspect, certify and seal electronic voting machines that are to be used in the election, and such preparation, inspection, certification and sealing shall continue until all machines are prepared, inspected, certified and sealed.

History: 953 Comp., § 3-11-6, enacted by Laws 1969, ch. 240, § 215; 1981, ch. 137, § 1; 1985, ch. 207, § 24; 2011, ch. 137, § 74.

### **ANNOTATIONS**

**Cross references.** — For manner of preparing voting machine, see 1-11-6 NMSA 1978.

**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. 1953-54 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.**

#### **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.

### 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.

### 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*..

## 1-11-13. 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. Hockenull*, 39 N.M. 79, 39 P.2d 1027 (1934).

**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 member's oath.**

The secretary of state shall prescribe the form of the signature roster certificates, checklist of registered voter's certificates and the precinct board member's oath.

**History:** 1953 Comp., § 3-11-19, enacted by Laws 1969, ch. 240, § 228; 1971, ch. 317, § 19; 1981, ch. 137, § 5; 1985, ch. 207, § 32; 1991, ch. 105, § 24.

#### **ANNOTATIONS**

**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.

## **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*, 28 N.M. 565, 215 P. 968 (1923).

**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*, 22 N.M. 30, 158 P. 1088 (1916).

**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. 1955-56 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 attendance.**

Precinct board members, excepting those members scheduled to work only the second shift, shall present themselves at the polling place not later than 6:00 a.m. on the date required by law for the election.

**History:** 1953 Comp., § 3-12-2, enacted by laws 1969, ch. 240, § 238; 1977, ch. 222, § 35; 1985, ch. 205, § 2; 1999, ch. 236, § 3.

#### **ANNOTATIONS**

**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 work shift option.**

A. The county clerk may choose to schedule precinct board members into two work shifts on election day and also may determine the length of each shift for each precinct board member so long as the first shift begins at least one hour before the polls open.

B. If the county clerk chooses to schedule precinct board members in shifts, the presiding judge on each precinct board shall be scheduled to work both shifts that day.

C. The county clerk shall notify the secretary of state of all precincts that will be following a two-shift schedule when the county clerk submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978.

History: Laws 1999, ch. 236, § 1; 2011, ch. 137, § 81.

#### **ANNOTATIONS**

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

#### **1-12-3. Conduct of election; precinct board duties.**

The secretary of state shall prescribe the duties of the precinct board, including duties that, during the conduct of the election, the presiding judge may reassign between judges and election clerks. Copies of such duties shall be furnished to each county clerk, and the clerk shall distribute them to each precinct.

History: 1953 Comp., § 3-12-3.1, enacted by Laws 1977, ch. 222, § 36; 2011, ch. 137, § 82.

#### **ANNOTATIONS**



**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 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**

**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 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**

**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, 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**

**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 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**

**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.**

A. A person shall not vote in a primary, general or statewide special election unless he is a voter of the county in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.

C. A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration.

**History:** 1953 Comp., § 3-12-10, enacted by Laws 1969, ch. 240, § 246; 1987, ch. 249, § 25; 1991, ch. 105, § 25; 1993, ch. 314, § 54; 1993, ch. 316, § 54; 1999, ch. 267, § 31; 2003, ch. 356, § 29.

#### **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 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.

**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. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of an alphabetical list of voters for use of the voters prior to voting. The posted copy shall not contain a listing of voter addresses, years of birth, unique identifiers or social security numbers.

B. The presiding judge of the precinct board shall assign one judge or election clerk of the board to be in charge of one copy of the checklist of voters, which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one judge or election clerk to be in charge of the signature roster.

D. The judge or election clerk assigned to the checklist of voters used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of the person's name on the checklist of voters and the voter provides the required voter identification, the judge or election clerk shall announce to the judges or election clerks the list number and the name of the voter as shown on the checklist of voters. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk's office before 5:00 p.m. on the second day following the election, or to the precinct board before the polls close, or the voter's provisional ballot shall not be qualified. If the required voter identification is provided, the voter's provisional paper ballot shall be qualified and the voter shall not vote on any other type of ballot.

E. The judge or election clerk shall locate that list number and 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. 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 and the voter shall not vote on any other type of ballot.

F. 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.

G. 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; recompiled as 1-12-7.1 by Laws 2005, ch. 270, § 63; 2008, ch. 59, § 8; 2011, ch. 137, § 83.

## 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.

**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 the voter has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot tracking number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on the voter's certificate of registration. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

History: 1953 Comp., § 3-5-13, enacted by Laws 1969, ch. 240, § 114; 1975, ch. 255, § 69; 1993, ch. 314, § 37; 1993, ch. 316, § 37; 2001, ch. 146, § 4; 2003, ch. 356, § 16; recompiled as 1-12-7.2 NMSA 1978 by Laws 2005, ch. 270, § 78; 2011, ch. 137, § 84.

## 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 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. The voter shall sign the signature roster before receiving a ballot. The precinct board member shall mark the checklist of voters to verify the voters on the list who have voted.

B. The county clerk shall prepare an alphabetical listing of voters in each precinct, which will be delivered to each precinct board and posted inside the polling place for public use.

C. After the polls have closed, the presiding judge shall deliver the signed signature roster to the county clerk and mail the checklist of voters to the secretary of state.

History: 1953 Comp., § 3-5-8, enacted by Laws 1969, ch. 240, § 110; 1975, ch. 255, § 67; 1977, ch. 222, § 9; 1987, ch. 249, § 15; 1987, ch. 327, § 3; 1993, ch. 314, § 36;

1993, ch. 316, § 36; 1995, ch. 166, § 2; 2005, ch. 270, § 28; 2007, ch. 337, § 8; 2008, ch. 59, § 4; 1978 Comp., § 1-5-8 recompiled as § 1-12-7.4 by Laws 2011, ch. 137, § 109.

## 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.

### **1-12-8. 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 shall deliver the unopened official mailing envelopes to the county clerk before midnight on election day.

C. If the unopened official mailing envelope is received by the county clerk from a precinct board before the absent voter precinct board has adjourned, it shall be logged and transmitted to the absent voter precinct board to be tallied immediately. If the unopened mailing envelope is received by the county clerk from a precinct board after the absent voter precinct board has adjourned, it shall be logged and transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

History: Laws 2005, ch. 270, § 60; 2007, ch. 336, § 16; 2011, ch. 137, § 87.

### **ANNOTATIONS**

**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.**

### **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.**

### **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, 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, provided 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.

**Only electors residing in municipalities may vote therein although registration book contains all.** — In municipalities where a general election voting precinct or district is both within and without the boundaries of a municipality, the election judges in this particular precinct or district will, in a municipal election, have registration books containing electors residing both within and without the municipality, but only those whose affidavits of registration show on their face that they reside within the municipality will be entitled to vote at municipal elections. 1939-40 Op. Att'y Gen. 125 (opinion rendered under former law).

**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; voter information.**

A. The secretary of state shall issue rules describing the voter information the county clerks shall display, in accordance with the federal Help America Vote Act of 2002, in each polling place on election day and in each county clerk's office and alternate location where absentee or early voting is taking place.

B. Each polling place shall post the phone numbers of the county clerk and the secretary of state 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.

**History:** Laws 2003, ch. 356, § 2; 2005, ch. 270, § 66.

#### **ANNOTATIONS**

**Cross references.** — For the Help America Vote Act of 2002, see 42 U.S.C. § 15301.

**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.**

#### **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.

**History:** 1953 Comp., § 3-12-29, enacted by Laws 1969, ch. 240, § 265; 1977, ch. 124, § 8; 2005, ch. 270, § 67.

## ANNOTATIONS

**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. 1963-64 Op. Att'y Gen. No. 63-8 (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. 1961-62 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 perjury.

**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.



## ANNOTATIONS

**Cross references.** — For perjury, see 30-25-1 NMSA 1978.

**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. 1955-56 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 primary, general or statewide special 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 machine 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.

**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.

## ANNOTATIONS

**Cross references.** — For the election translator and oral assistance for language minority voters, see 1-2-19 NMSA 1978.

**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. 1961-62 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. 1955-56 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, 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**

**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. General elections; special 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-first day after the primary election a declaration of intent to be a write-in candidate. 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.

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

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code [Chapter 1 NMSA 1978], including the obligation to

report under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

D. The secretary of state shall, not more than ten days after the filing date, certify the names of the declared write-in candidates to the county clerks of every county affected by such candidacy.

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

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

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

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

G. No unopposed write-in candidate shall have an election certified unless the candidate receives at least the number of write-in votes 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.

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

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.

## ANNOTATIONS

**Cross references.** — For write-in candidates in primary election, see 1-8-36.1 NMSA 1978.

**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.*, 106 N.M. 426, 744 P.2d 554 (Ct. App. 1987).

**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.

## **1-12-20. Conduct of election; interposing challenges.**

A challenge may be interposed by a member of the precinct board or by a party challenger for the following reasons:

- A. the person offering to vote is not registered to vote;
- B. the person offering to vote is listed among those persons to whom an absentee ballot was mailed;
- C. the person offering to vote has already cast a ballot in that election;
- D. the person offering to vote is improperly registered because the person is not a qualified elector; or
- E. in the case of a primary election, the person desiring to vote is not affiliated with a political party represented on the ballot.

History: 1953 Comp., § 3-12-37, enacted by Laws 1969, ch. 240, § 273; 1987, ch. 249, § 31; 2011, ch. 137, § 90.

## ANNOTATIONS

**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 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*, 27 N.M. 169, 199 P. 370 (1921)(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 ex rel. Lester v. Suddith, 15 N.M. 728, 110 P. 1038 (1910).

**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 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**

**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.**

#### **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.**

#### **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;
- 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**

**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 county clerk shall provide a free access system, such as a toll-free telephone number or internet web site, 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 is restricted to the voter who cast the ballot.

C. Beginning with the closing of the polls on election day through the tenth day following the election, the county clerk shall notify by mail each person whose provisional paper ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal to the county clerk a decision to reject the voter's ballot.

History: Laws 2003, ch. 356, § 3; 2005, ch. 270, § 70; 2007, ch. 336, § 17; 2011, ch. 137, § 94.

## ANNOTATIONS

**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 and the provisional paper ballot shall not be counted.

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, 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 at a polling place other than the voter's designated polling place, 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 canvassing board 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.

### ANNOTATIONS

**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 shall proclaim that fact aloud at the place of election. After the proclamation no voter shall cast a vote. However, if at the hour of closing there are other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. In the instructions to the precinct board the secretary of state shall specify procedures whereby the precinct board shall determine the identity of the last person in line at the time the polls closed.

**History:** 1953 Comp., § 3-12-45, enacted by Laws 1969, ch. 240, § 281; 1977, ch. 222, § 39.

### ANNOTATIONS

**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. 1955-56 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 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

**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. 1955-56 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, candidates or their representatives, representatives of the news media and lawfully appointed challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, signature rosters or tally sheets or take part in the counting and tallying.

**History:** 1953 Comp., § 3-12-51, enacted by Laws 1969, ch. 240, § 287; 1987, ch. 249, § 36.

## ANNOTATIONS

**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 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**

**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) one ballot box key in an envelope addressed to the county clerk;
- (2) one signature roster;
- (3) one tally sheet;



(4) all unused election supplies not destroyed pursuant to the Election Code [Chapter 1, NMSA 1978]; and

(5) the removable media storage device.

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

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.

### ANNOTATIONS

**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.

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

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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 County Comm'rs v. Chavez*, 41 N.M. 300, 67 P.2d 1007 (1937).

**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*, 36 N.M. 274, 13 P.2d 877 (1932).

**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*, 28 N.M. 565, 215 P. 968 (1923).

**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*, 24 N.M. 616, 175 P. 335 (1918).

### **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. 1941-42 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."

#### **ANNOTATIONS**

**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.**

#### **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 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**

**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.**

#### **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 results of the votes cast shall be distinctly announced by the presiding judge, who shall read the name of each candidate and the vote registered on the printed returns. The presiding judge shall also read the vote cast for and against each constitutional amendment or other question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns, and any necessary corrections shall then and there be made by the precinct board.

**History:** 1953 Comp., § 3-12-62.1, enacted by Laws 1973, ch. 358, § 3.

#### **ANNOTATIONS**

**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 shall complete the locking procedures on the voting machine.

**History:** 1953 Comp., § 3-12-63, enacted by Laws 1969, ch. 240, § 299.

### **1-12-40. Repealed.**

#### **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.*, 103 N.M. 453, 708 P.2d 1054 (Ct. App. 1985).

**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.

History: 1953 Comp., § 3-12-77, enacted by Laws 1977, ch. 222, § 46; 2009, ch. 150, § 19; 2011, ch. 137, § 98.

### **ANNOTATIONS**

**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. 1953-54 Op. Att'y Gen. No. 54-5920 (opinion rendered under former law).

## **1-12-44. Recompiled.**

### **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.**

### **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.**

### **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.**

### **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.**

### **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.**

#### **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.**

#### **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.**

#### **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 or at an alternate voting location. No person other than a member of the precinct board or officer authorized by law shall deliver a paper ballot to any voter.

History: 1953 Comp., § 3-12-85, enacted by Laws 1977, ch. 222, § 54; 2009, ch. 150, § 20; 2011, ch. 137, § 99.

#### **ANNOTATIONS**

**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.**

### **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.**

### **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.**

### **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.**

### **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 or alternate voting location, the voter:

- A. shall not show it to any person in such a way as to reveal its contents; and
- B. shall feed the paper ballot into the electronic vote tabulator.

History: 1953 Comp., § 3-12-91, enacted by Laws 1977, ch. 222, § 60; 2009, ch. 150, § 22.

### **ANNOTATIONS**

**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 ex rel. Lester v. Suddith*, 15 N.M. 728, 110 P. 1038 (1910)(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.**

### **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.**

No person shall solicit the voter to show the voter's marked paper ballot.

History: 1953 Comp., § 3-12-93, enacted by Laws 1977, ch. 222, § 62; 2009, ch. 150, § 24.

### **ANNOTATIONS**

**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.**

### **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.

### 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. Emergency situations; paper ballots; counting and tallying procedures.

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the paper ballots that were not tabulated by the electronic vote tabulator and certify the results of the election on the form on the tally sheet setting opposite the name of each candidate in figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor the total number of votes cast for and against each constitutional amendment and other questions. Paper ballots not marked as required by the Election Code [Chapter 1 NMSA 1978] shall not be counted. The precinct board shall sign the tally sheet certificate.

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

History: 1953 Comp., § 3-12-99, enacted by Laws 1977, ch. 222, § 68; 1991, ch. 105, § 37; 2009, ch. 150, § 28.

### ANNOTATIONS

**Cross references.** — For marking emergency paper ballots, see 1-12-53 NMSA 1978.

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

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

C. Signature rosters, checklists of registered voters and tally sheets in the custody of the county clerk and the secretary of state may be destroyed 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.

### **ANNOTATIONS**

**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 the paper ballots are tallied, the precinct board shall place the bundles of counted paper ballots in the ballot box and the ballot box shall be closed and locked.

History: 1953 Comp., § 3-12-101, enacted by Laws 1977, ch. 222, § 70; 1987, ch. 249, § 42; 2009, ch. 150, § 30.

#### **ANNOTATIONS**

**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, the county canvassing board and other persons desiring to be present.

E. The precinct board shall then recount the paper ballots and make a new tally sheet certificate in duplicate to conform to the facts.

F. After the recount is completed, the precinct board shall replace in the ballot box the paper ballots and other items taken therefrom and shall lock and return the ballot



box and one key to the county clerk. The other key shall be returned to the district court or its representative.

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

History: 1953 Comp., § 3-12-102, enacted by Laws 1977, ch. 222, § 71; 1987, ch. 249, § 43; 2009, ch. 150, § 31.

## ANNOTATIONS

**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.**

A. Paper ballots marked by voters and all records related to voting in any election in which a federal candidate appears on the ballot shall be retained and preserved for a period of twenty-two months from the date of the election.

B. Paper ballots marked by voters and all records related to voting in any election in which no federal candidate appears on the ballot shall be retained and preserved for forty-five days after adjournment of the state or county canvassing board, whichever is later.

C. In precincts where a recount or judicial inquiry or inspection of contents is sought, the county clerk shall hold ballots marked by voters and records related to voting in those precincts intact subject to order of the district court or other authority having jurisdiction of the contest or inspection.

D. Paper ballots marked by voters and records related to voting in any election shall only be destroyed pursuant to rules promulgated by the state records center for destruction of public records.

E. The state records center is authorized to receive for storage and destruction paper ballots marked by voters and records related to voting in any election in which a federal candidate appears on the ballot. At least three days prior to sending the ballots and records to the state records center, the county clerk shall notify the county chair of each political party that participated in the election. The chairs or their designees may inspect the boxes prior to their sealing for delivery.

F. At least three days prior to the destruction by the county clerk of paper ballots marked by voters and records related to voting, the county clerk shall notify the county chair of each political party participating in the election of the time, place and date thereof. The chair of each political party may be present or may have the chair's accredited representative present.

History: 1953 Comp., § 3-12-103, enacted by Laws 1977, ch. 222, § 72; 1981, ch. 149, § 9; 2008, ch. 58, § 3.

### **ANNOTATIONS**

**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. Restriction on local government elections.**

No municipal, school or special district election shall be held within forty-two days prior to any statewide election.

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 former 1-4-10 NMSA 1978 as 1-12-71 NMSA 1978 effective July 1, 2011.

**Middle Rio Grande Conservancy District.** — The Middle Rio Grande Conservancy District is not subject to the restrictions on the timing of elections contained in this section. 1988 Op. Att'y Gen. No. 88-34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Scheduling election on religious holiday as violation of federal constitutional rights, 44 A.L.R. Fed. 886.

## **ARTICLE 13**

### **Post-Election Duties**

#### **1-13-1. Post-election duties; county canvassing board.**

The board of county commissioners is ex officio the county canvassing board in each county.

**History:** 1953 Comp., § 3-13-1, enacted by Laws 1969, ch. 240, § 303.

#### **ANNOTATIONS**

**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 has not delivered the election returns to the county clerk, the county canvassing board shall immediately issue a summons to bring before it the delinquent precinct board together with the missing election returns. The summons shall be served by the sheriff, without cost to the county, and the members of the precinct board shall not be paid for their service on election day.

B. If within ten days after the date of the election the secretary of state has not received the election returns of any precinct, the secretary of state may send a special messenger to the county and precinct to secure and convey the missing returns to the secretary of state.

**History:** 1953 Comp., § 3-13-2, enacted by Laws 1969, ch. 240, § 304; 1977, ch. 222, § 73.

## ANNOTATIONS

**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. Post-election duties; county canvass; commencement.**

The county canvassing board shall meet within three days after the election and proceed to canvass the returns of the election.

**History:** 1953 Comp., § 3-13-3, enacted by Laws 1969, ch. 240, § 305.

## ANNOTATIONS

**Cross references.** — For county canvassing board to canvass returns for officers elected by more than one county, see N.M. Const., art. XX, § 7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 397.

Officers conducting election, result as affected by lack of title or defective title of, 1 A.L.R. 1513.

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 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 § 236.

### **1-13-4. Post-election duties; county canvass; method.**

The county canvassing board shall canvass the election returns by carefully examining such returns of each precinct to ascertain if they contain the properly executed certificates required by the Election Code [Chapter 1 NMSA 1978] and to ascertain whether any discrepancy, omission or error appears on the face of the election returns.

**History:** 1953 Comp., § 3-13-4, enacted by Laws 1969, ch. 240, § 306; 1977, ch. 222, § 74.

## 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.

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

"**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 30, 145 P.2d 487 (1944).

**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*, 48 N.M. 30, 145 P.2d 487 (1944).

**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*, 42 N.M. 172, 76 P.2d 41 (1938).

**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 County Comm'rs v. Chavez*, 41 N.M. 300, 67 P.2d 1007 (1937).

**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*, 2 N.M. 321 (1882).

**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. 1951-52 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, commanding them to forthwith appear and make the necessary corrections or supply omissions if:

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

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

(3) it appears that there is a discrepancy between the number of votes set forth in the certificate for any candidate and the number of electors voting as shown by the election returns; or

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

B. The summons shall be served by the sheriff as in the manner of civil cases, and for each service the sheriff shall be allowed the same mileage as is paid in civil cases. The mileage shall be paid by each member of the precinct board served.

C. After issuing the necessary summonses, the county canvassing board shall proceed with the canvass of all correct election returns.

**History:** 1953 Comp., § 3-13-5, enacted by Laws 1969, ch. 240, § 307; 1977, ch. 222, § 75.

### **ANNOTATIONS**

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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, 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**

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 398.

### **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*, 59 N.M. 470, 286 P.2d 317 (1955).

**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*, 48 N.M. 30, 145 P.2d 487 (1944).



**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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 to ascertain if missing election returns are enclosed in the ballot box, the ballot box shall be opened by the county clerk and the district judge, or someone designated by the district judge. In the presence of the district judge or the designated representative of the district judge, the county clerk may remove the missing returns necessary to canvass the election. When such omission or negligence of the precinct board causes an additional expense to be incurred, no compensation shall be paid to the precinct board for its services on election day.

History: 1953 Comp., § 3-13-8, enacted by Laws 1969, ch. 240, § 310; 1977, ch. 222, § 77; 2011, ch. 137, § 101.

#### **ANNOTATIONS**

**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 and registered on the counter dials of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the county canvassing board may unlock and raise the cover of the counter compartment and check the figures

shown by the counter dials on the voting machine. At the conclusion of the recheck and comparison the voting machine shall again be locked.

C. 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.

## 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.

**District judge serves as aid** to canvassing board in canvass of election returns. *Reese v. Dempsey*, 48 N.M. 417, 152 P.2d 157 (1944)(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 1-13-10 NMSA 1978, the candidate making the request, or the petitioners, shall deposit a sum of money or a surety bond made in favor of the county to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars (\$10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid by the county. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be placed in the county general fund.

**History:** 1953 Comp., § 3-13-11, enacted by Laws 1969, ch. 240, § 313; 1973, ch. 4, § 6.

## ANNOTATIONS

**Cross references.** — For cost of recount proceedings, see 1-14-15 NMSA 1978.

### **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.**

A. The county canvassing board shall not adjourn until it has canvassed all the returns of the election.

B. The district court, upon petition of any qualified elector, may issue a writ of mandamus to the county canvassing board to compel it to canvass, declare and certify the election returns.

**History:** 1953 Comp., § 3-13-13, enacted by Laws 1969, ch. 240, § 315.

#### **ANNOTATIONS**

**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*, 47 N.M. 471, 144 P.2d 175 (1943).

**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 County Comm'rs v. Chavez*, 41 N.M. 300, 67 P.2d 1007 (1937).

**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 ex rel. Lester v. Suddith, 15 N.M. 728, 110 P. 1038 (1910).

**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, 6 N.M. 80, 27 P. 416 (1891).

**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, 2 N.M. 321 (1882).

**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 complete the canvass of the returns and declare the results within ten days from the date of the election.

B. On the thirty-first day after any primary, general or district special election, the county canvassing board 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 shall declare the results,

immediately after completion of the canvass, of the election and of all questions affecting only the county.

C. The county canvassing board, immediately after completion of the canvass, shall also certify to the state canvassing board the number of votes cast for all other candidates and questions respectively and shall immediately deliver to the county chairman of each political party that participated in the election a certificate showing the total number of votes cast for each candidate in the election in the county.

**History:** 1953 Comp., § 3-13-14, enacted by Laws 1969, ch. 240, § 316; 1979, ch. 378, § 15.

### ANNOTATIONS

**Cross references.** — For county canvassing board certifying votes for officers elected by more than one county, see N.M. Const., art. XX, § 7.

**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*, 48 N.M. 30, 145 P.2d 487 (1944) (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 after its first count and tally, no person shall open the ballot box or remove its contents except as provided by the Election Code [Chapter 1 NMSA 1978].

**History:** 1953 Comp., § 3-13-15, enacted by Laws 1969, ch. 240, § 317.

### ANNOTATIONS

**Cross references.** — For unlawful opening of ballot box, see 1-20-4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 29 C.J.S. Elections § 226.

### 1-13-15. Post-election duties; state canvass.

The state canvassing board shall meet in the state capitol on the third Tuesday after each election and proceed to 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. The state canvassing board shall also canvass and declare the result of the vote on any constitutional amendment or any question voted upon by the voters of more than one county. 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.

## 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.

**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*, 39 N.M. 79, 39 P.2d 1027 (1934) (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*, 39 N.M. 42, 38 P.2d 1118 (1934) (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; state canvass method.**

A. The state canvass shall be made from the election returns transmitted directly to the secretary of state from each of the precinct 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.

B. Upon the completion of the canvass, but not sooner than the thirty-first day after any primary, general or district special election, the state canvassing board 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. 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.

**History:** 1953 Comp., § 3-13-17, enacted by Laws 1969, ch. 240, § 319; 1977, ch. 222, § 80; 1979, ch. 378, § 16.

## ANNOTATIONS

**Cross references.** — For ballots cast by unregistered or otherwise unqualified electors not to be canvassed, see 1-4-1 NMSA 1978.

**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*, 48 N.M. 485, 153 P.2d 127 (1944).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 48 N.M. 417, 152 P.2d 157 (1944).

**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*, 39 N.M. 79, 39 P.2d 1027 (1934).

### **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 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**

**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. Hockenull, 39 N.M. 79, 39 P.2d 1027 (1934)(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.**

A. The county clerk shall not clear the votes recorded on the removable storage media devices until at least thirty days after adjournment of the state canvassing board.

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.

**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.

#### **ANNOTATIONS**

**Cross references.** — For unlawful opening of a voting machine, see 1-20-5 NMSA 1978.

**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 care of machines obtained under lease-purchase contract, see 1-9-8 NMSA 1978.

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.

## **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*, 101 N.M. 703, 688 P.2d 21 (1984).

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 55 N.M. 497, 236 P.2d 727 (1951).

**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*, 31 N.M. 82, 239 P. 452 (1925).

**Justices of peace (now magistrates) and constables may institute** election contest proceedings. *Carabajal v. Lucero*, 22 N.M. 30, 158 P. 1088 (1916).

## 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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 39 N.M. 42, 38 P.2d 1118 (1934).

**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*, 37 N.M. 407, 24 P.2d 265 (1933).

### 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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**Right to hold office is not property right** nor is it vested one. *Montoya v. McManus*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 51 N.M. 484, 188 P.2d 337 (1947).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 35 N.M. 446, 300 P. 441 (1931).

**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*, 22 N.M. 30, 158 P. 1088 (1916).

**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*, 2 N.M. 321 (1882).

#### 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*, 55 N.M. 205, 230 P.2d 238 (1951).

**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*, 48 N.M. 45, 145 P.2d 864 (1944).

**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*, 42 N.M. 172, 76 P.2d 41 (1938).

**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*, 39 N.M. 470, 49 P.2d 1134 (1935).

**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*, 39 N.M. 42, 38 P.2d 1118 (1934).

**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*, 22 N.M. 417, 163 P. 1085 (1917).

**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*, 48 N.M. 30, 145 P.2d 487 (1944)(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*, 1 N.M. 29 (1853), overruled on other grounds, *Arellano v. Chacon*, 1 N.M. 269 (1859) (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*, 109 N.M. 205, 784 P.2d 24 (1989).

**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 County Comm'rs*, 103 N.M. 442, 708 P.2d 1043 (1985), 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*, 101 N.M. 703, 688 P.2d 21 (1984).

**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*, 83 N.M. 498, 494 P.2d 160 (1972).

**Function and effect of prayer** in election contests does not differ from that in ordinary civil actions. *Heth v. Armijo*, 83 N.M. 498, 494 P.2d 160 (1972).

**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*, 83 N.M. 498, 494 P.2d 160 (1972).

**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*, 83 N.M. 498, 494 P.2d 160 (1972).

**Rules of civil procedure apply** to election contests except when inconsistent. *Heth v. Armijo*, 83 N.M. 498, 494 P.2d 160 (1972).

**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*, 65 N.M. 80, 332 P.2d 1005 (1958) (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*, 35 N.M. 446, 300 P. 441 (1931) (decided under former law).

**Justices of peace (now magistrates) and constables may institute** contest proceedings. *Carabajal v. Lucero*, 22 N.M. 30, 158 P. 1088 (1916) (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*, 2 N.M. 321 (1882).

**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*, 109 N.M. 205, 784 P.2d 24 (1989).

**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*, 109 N.M. 205, 784 P.2d 24 (1989).

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 55 N.M. 497, 236 P.2d 727 (1951).

**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. 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 it 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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 32 N.M. 231, 255 P. 636 (1927).

**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*, 22 N.M. 417, 163 P. 1085 (1917).

**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 [Chapter 1 NMSA 1978] for the preservation of ballots, may give notice by registered mail to the county clerk of those counties wherein he 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.

#### **ANNOTATIONS**

**Notice of contest served on clerk to preserve ballot box.** — When election contests are instituted within 75 days of adjournment of state canvassing board, a notice of such contest should be served upon county clerk so that ballot boxes and contents may be preserved intact to await orders of court. 1935-36 Op. Att'y Gen. p. 31 (opinion rendered under former law).

**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.**

Any candidate in an election may petition the district court for an order impounding ballots in one or more precincts within which he is a candidate. The action shall be brought in the district court for the county in which the precincts are located. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of

the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct, the court shall issue an order of impoundment.

**History:** 1953 Comp., § 3-14-16.1, enacted by Laws 1971, ch. 249, § 2.

### **1-14-10. Order of impoundment; contents.**

The court order of impoundment shall specify the items of ballots to be impounded and shall direct the state police to:

A. take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;

B. take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the precinct polling place until the polling place 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 of any precinct has failed to substantially comply with the provisions of the Election Code [Chapter 1 NMSA 1978] that protect the secrecy and sanctity of the ballot and prescribe duties of the precinct board during the conduct of election, shall cast upon the candidates of the political party having majority representation on the precinct board the burden of proving that no fraud, intimidation, coercion or undue influence was exerted by such members of the precinct board, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. Upon failure to make such a showing upon which the court shall so find, the votes of that entire precinct shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board ignored the

requirements of the Election Code with the probable interest of procuring the rejection of the entire vote in the precinct.

**History:** 1953 Comp., § 3-14-17, enacted by Laws 1969, ch. 240, § 342.

### ANNOTATIONS

**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.

### 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 general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico.

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	9
greater than 6.0 but less than or equal to 7.0	10
greater than 5.5 but less than or equal to 6.0	11
greater than 5.0	13



but less than or equal to 5.5 greater than 4.5	14
but less than or equal to 5.0 greater than 4.0	16
but less than or equal to 4.5 greater than 3.5	18
but less than or equal to 4.0 greater than 3.0	22
but less than or equal to 3.5 greater than 2.5	26
but less than or equal to 3.0 greater than 2.0	32
but less than or equal to 2.5 greater than 1.8	37
but less than or equal to 2.0 greater than 1.6	42
but less than or equal to 1.8 greater than 1.4	47
but less than or equal to 1.6 greater than 1.2	54
but less than or equal to 1.4 greater than 1.1	59
but less than or equal to 1.2 greater than 1.0	65
but less than or equal to 1.1 greater than 0.9	73
but less than or equal to 1.0 greater than 0.8	82
but less than or equal to 0.9 greater than 0.7	93
but less than or equal to 0.8 greater than 0.6	109
but less than or equal to 0.7 greater than 0.5	130
but less than or equal to 0.6 0.5 or less	automatic recount for that office.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for

candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check.

D. Based on the results of the voting system check and any other auditing results, the auditor shall determine the error rate in the sample for each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample shall be reported, and if it exceeds ninety percent of the winning margin for the office, the state canvassing board shall order that a full hand recount of the ballots for that office be conducted.

E. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

F. Persons designated as county canvass observers may observe the hand recount described in Subsection C of this section. Observers shall comply with the procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

G. If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts.

History: Laws 2009, ch. 233, § 1.

## 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.

### **1-14-13.3. 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 for any office for which the state canvassing board or county canvassing board issues a certificate of nomination or election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the proper canvassing board, may have a recount of the ballots, or a recheck of the votes shown on the voting machines, that were cast in the precinct.

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

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

History: 1953 Comp., § 3-14-18, enacted by Laws 1969, ch. 240, § 343; 1977, ch. 222, § 82; 2009, ch. 150, § 32.

## 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 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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**Examination of write-in scrolls constitutes a "recheck",** and is covered by this section. *Weldon v. Sanders*, 99 N.M. 160, 655 P.2d 1004 (1982).

**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*, 99 N.M. 160, 655 P.2d 1004 (1982).

**Rights to election contest or recount** are purely statutory and do not apply to local option elections. *State ex rel. Denton v. Vinyard*, 55 N.M. 205, 230 P.2d 238 (1951).

**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*, 55 N.M. 205, 230 P.2d 238 (1951).

**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*, 39 N.M. 42, 38 P.2d 1118 (1934).

**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*, 35 N.M. 252, 294 P. 631 (1930), *aff'd*, 36 N.M. 274, 13 P.2d 877 (1932).

**When sixth day after completion of canvass fell on Sunday,** application for recount filed on Monday following was seasonable. *Sandoval v. Madrid*, 35 N.M. 252, 294 P. 631 (1930), *aff'd*, 36 N.M. 274, 13 P.2d 877 (1932).

**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. 1955-56 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 precinct and a recheck per voting machine no later than March 15 of even-numbered years. The secretary of state shall post the recount and recheck cost determinations on the secretary of state's web site when the state canvassing board issues its cost determinations.

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

C. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the state upon warrant issued by the secretary of finance and administration supported by a voucher of the secretary of state, or shall be paid by the county upon warrant of the county clerk from the general fund of the county, as the case may be.

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

History: 1953 Comp., § 3-14-19, enacted by Laws 1978, ch. 48, § 1; 2001, ch. 109, § 1; 2005, ch. 270, § 77; 2007, ch. 336, § 18.

### **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 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.

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

Purpose was to require more in way of bond than written promise to pay. *Montoya v. McManus*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 68 N.M. 381, 362 P.2d 771 (1961).

**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*, 51 N.M. 51, 178 P.2d 401 (1947).

**Individuals may qualify as sureties** on the required bond. *Sandoval v. Madrid*, 35 N.M. 252, 294 P. 631 (1930), *aff'd*, 36 N.M. 274, 13 P.2d 877 (1932).

**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 the absent voter precinct board at the county seat on a day specified in the order, which date shall not be more than ten days after the filing of the application for a recount or recheck or notice of an automatic recount.

B. Upon receipt of the order, the county clerk shall send notices by registered mail of the date fixed for the recount or recheck to the district judge for the county, the absent voter precinct board members and the county chair of each of the political parties that participated in the election for the office in question.

C. The absent voter precinct board, district judge and county clerk shall meet on the date fixed for the recount or recheck, and the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck shall be opened. The absent voter precinct board shall recount and retally the ballots, or recheck the votes cast on the voting machines, as the case may be, for the office in question in the presence of the county clerk, district judge, or person designated to act for the district judge, and any other person who may desire to be present.

D. After completion of the recount or recheck, the absent voter precinct 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 shall certify to the secretary of state the results of the recount or recheck. The district judge, or the person designated to act for 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; repealed and reenacted by Laws 2008, ch. 41, § 3.

### ANNOTATIONS

**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 the section above, effective May 14, 2008.

**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.

### 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 absent voter precinct boards making a recount or recheck, the proper canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the proper canvassing board shall be bound by the certificates of recount or recheck from the absent voter precinct boards instead of the original returns from the precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the proper canvassing board shall revoke the certificate of nomination or election already issued to any person for that office and shall issue a certificate of nomination or election in favor of the person receiving a plurality of the votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to the same rights and privileges as if such certificate had been originally issued by the canvassing board.



History: 1953 Comp., § 3-14-22, enacted by Laws 1969, ch. 240, § 347; 1977, ch. 222, § 86; 2008, ch. 41, § 4.

## ANNOTATIONS

**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 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.

### **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 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

**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*, 47 N.M. 471, 144 P.2d 175 (1943) (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*, 35 N.M. 219, 294 P. 316 (1930) (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.**

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.

History: Laws 2005, ch. 270, § 76; 2007, ch. 336, § 19.

### **ANNOTATIONS**

**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, the secretary of state shall issue rules to implement the recount procedures provided for in Subsections B and C of this section.

B. The votes from a random selection of ballots shall be tallied by hand, and the votes from the same ballots shall be tabulated by an electronic vote tabulating system.

For statewide and federal office, the number of ballots to be tallied and tabulated shall be equal to at least 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.

C. For a statewide or federal office, if the results of the hand-tally and the electronic vote tabulating system tabulation differ by one-fourth of one percent or less, the remaining ballots shall be recounted using electronic vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

D. For offices other than statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system tabulation differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using electronic vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

E. Nothing in this section prohibits a candidate from requesting a hand recount in accordance with the provisions of Section 1-14-15 NMSA 1978.

History: Laws 2007, ch. 337, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2007, ch. 336, § 20 made Laws 2007, ch. 337, § 2 effective July 1, 2007.

### **1-14-24. Automatic recounts; elections for state and federal offices; procedures.**

A. An automatic recount of the vote is required when the canvass of returns for a federal or state office in a primary or general election indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one-half of one percent of the total votes cast for that office in that election.

B. The secretary of state shall file notice with the state canvassing board within five days of 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.

C. Automatic recounts shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-22 NMSA 1978.

D. For the purposes of this section, "state office" means the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, secretary of state, supreme court justice, court of appeals judge, district judge, magistrate judge, public regulation commissioner, commissioner of public lands, state senator or state representative.

History: Laws 2008, ch. 41, § 1.

#### 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.

#### **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 such 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 chairman and secretary of the convention shall certify the names and addresses of such nominees not less than fifty-six days prior to the election to the secretary of state. The secretary of state shall record the nominees' names in his 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.

#### **ANNOTATIONS**

**Cross references.** — For party filing rules with the secretary of state, see 1-7-2 to 1-7-5 NMSA 1978.

**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. 1953-54 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 such 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 such pair of nominees shall be a vote for the presidential electors of the political party by which such nominees were named.

C. The 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.

**History:** 1953 Comp., § 3-15-4, enacted by Laws 1969, ch. 240, § 354.

#### **ANNOTATIONS**

**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*, 79 N.M. 578, 446 P.2d 445 (1968) (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. 1953-54 Op. Att'y Gen. No. 54-5949 (opinion rendered under former law).

#### **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 [Chapter 10, Article 8 NMSA 1978], and he shall receive no other compensation. Per diem and mileage shall be paid by the state treasurer on warrants drawn 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 1-8-9 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. Unconstitutional.**

### **ANNOTATIONS**

**Compiler's notes.** — This section was declared malapportioned and therefore unconstitutional in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002). For present comparable provisions, see 1-15-15.2 NMSA 1978.

## **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. [United States representative; congressional districts.]**

Congressional District One is composed of Bernalillo county precincts 2 through 79, 81 through 83, 86 through 92, 94 through 99, 101 through 114, 116, 119 through 125, 131 through 144, 150 through 154, 161 through 166, 170, 171, 180 through 187, 191 through 197, 211, 212, 214 through 217, 221, 223 through 226, 241 through 246, 251 through 258, 271 through 275, 278, 281 through 287, 289 through 308, 311 through 318, 321 through 324, 326 through 333, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 400 through 456, 461 through 466, 471 through 478, 480 through 500, 502 through 573 and 601 through 603; Sandoval county precincts 1 through 5, 28, 29, 38, 52, 55 through 57, 64, 74 and 76; Santa Fe county precincts 15, 73 and 84; Torrance county; and Valencia county precincts 6, 16, 22, 28 and Census tabulation block 3506119703031019 in Valencia county precinct 36.

Congressional District Two is composed of Bernalillo county precinct 93; Catron county; Chaves county; Cibola county; De Baca county; Doña Ana county; Eddy county; Grant county; Guadalupe county; Hidalgo county; Lea county; Lincoln county; Luna county; McKinley county precincts 26, 27, 29 and 30; Otero county; Roosevelt county precincts 3 through 6, 10, 11, 19 and all of Roosevelt county precinct 2 except for Census tabulation block 350410002001111; Sierra county; Socorro county; and Valencia county precincts 1 through 5, 7 through 15, 17 through 21, 23 through 27, 29 through 35, 37 through 41 and all of Valencia county precinct 36 except for Census tabulation block 350611973031019.

Congressional District Three is composed of Bernalillo county precincts 1, 80, 84, 85, 115, 117, 118 and 127 through 129; Colfax county; Curry county; Harding county; Los Alamos county; McKinley county precincts 1 through 25, 28, 31 through 50 and 52

through 59; Mora county; Quay county; Rio Arriba county; Roosevelt county precincts 1, 7 through 9, 12, 13, 15, 17, 18, 21 and Census tabulation block 350410002001111 in Roosevelt county precinct 2; San Juan county; San Miguel county; Sandoval county precincts 6 through 27, 30 through 37, 39 through 51, 53, 54, 58 through 63, 65 through 73, 75 and 78 through 86; Santa Fe county precincts 1 through 14, 16 through 72, 74 through 83 and 85 through 88; Taos county; and Union county.

## 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 this section was adopted by that court. The section number was assigned by the compiler.

With regard to the precinct designations and boundaries used by the court in *Egolf v. Duran*, D-101-CV-2011-02942 (N.M. 1st Jud. Dist. January 25, 2012), to establish congressional districts, the court's order provided that "Precinct designations and boundaries used in this order are those precinct designations and boundaries established in accordance with law and approved by the Secretary of State as of August 31, 2011 for use in the 2011 redistricting process".

### 1-15-16. Unconstitutional.

## ANNOTATIONS

**Compiler's notes.** — This section was declared malapportioned and, therefore, unconstitutional in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002). For present comparable provisions, see 1-15-15.2 NMSA 1978.

### 1-15-16.1. Precincts.

A. Precinct designations and boundaries used in the 1991 congressional redistricting are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved pursuant to that act by the secretary of state as of August 16, 1991.

B. The boards of county commissioners shall not create any precinct that lies in more than one congressional district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more congressional districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

**History:** Laws 1991 (1st S.S.), ch. 7, § 2.

## **1-15-17. United States representative; nomination and election.**

One representative in congress shall be nominated and elected from each congressional district for voting purposes. Ballots for representatives in congress shall designate the office as congressional district number one, congressional district number two and congressional district number three. Only voters of each district shall be eligible to vote for the respective candidates of the district.

**History:** 1953 Comp., § 3-15-17, enacted by Laws 1969, ch. 240, § 367; 1982 (2nd S.S.), ch. 4, § 3.

### **ANNOTATIONS**

#### **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, 79 N.M. 578, 446 P.2d 445 (1968).

**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, 79 N.M. 578, 446 P.2d 445 (1968).

**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, 79 N.M. 578, 446 P.2d 445 (1968).

**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. Ten days after a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held not less than eighty-four nor more than ninety-one days after the date of the vacancy for the purpose of filling the vacancy, except as provided in Subsections E and F of this section.

B. Upon the issuance of the governor's 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 special election.

C. 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 fifty-sixth day preceding the date of the special election.

D. Special 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 [Chapter 1 NMSA 1978]; provided, however, if there is a conflict between this section and other provisions of the Election Code, the provisions of this section shall control.

E. If a vacancy occurs in the office of United States representative 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. 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.

F. If a vacancy occurs in the office of United States representative 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 or previously scheduled special election, then:

(1) the governor shall, by proclamation, call a special election to be held not more than forty-nine days after the vacancy is announced;

(2) 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; and

(3) 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 twentieth day following announcement of the vacancy.

History: 1978 Comp., § 1-15-18.1, enacted by Laws 1983, ch. 232, § 16; 2008, ch. 58, § 4.

## **ANNOTATIONS**

**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.**

In all instances where the expiring term of any elective state or district office or the office of United States senator or representative and the term next succeeding such expiring term are to be voted upon at the same general election, the same individual may be a candidate for both such expiring term and next succeeding term whether at a primary election, nominating convention or general election.

**History:** 1953 Comp., § 3-15-20, enacted by Laws 1969, ch. 240, § 370.

### **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.

## **ANNOTATIONS**

**Cross references.** — For Primary Election Law filing fee, see 1-8-41 NMSA 1978.

### **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. Presidential primary; date of election.**

In the year in which the president and vice president of the United States are to be elected, the registered voters of this state shall be given an opportunity to express their preference for the person to be the presidential candidate of their party in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party. The presidential primary election shall be held on the same date as the primary election is held in this state.

**History:** 1953 Comp., § 3-8-34, enacted by Laws 1977, ch. 230, § 2; 2003, ch. 300, § 2; 1978 Comp., § 1-8-54 recompiled as § 1-15A-2 by Laws 2011, ch. 137, § 109.

#### **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 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; certification.**

A. If a major political party chooses not to participate in the presidential primary, it shall notify the secretary of state at least thirty days before the governor is required to issue the proclamation of the primary election.

B. The state chairman 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 1-8-61 NMSA 1978.

History: Laws 2003, ch. 300, § 3; 1978 Comp., § 1-8-54.1 recompiled as § 1-15A-3 by Laws 2011, ch. 137, § 109.

#### **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.

### **1-15A-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 him in writing by certified mail, with return receipt requested, that his name will be printed as a candidate on the New Mexico presidential primary ballot unless he requests in writing otherwise at least fifty 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.

#### **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-58 NMSA 1978 as 1-15A-7 NMSA 1978 effective July 1, 2011.

**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. Voting in presidential primary; ballot position.**

A. All candidates in the presidential primary shall appear with the candidates for other offices of their respective parties at an appropriate place on the ballot. Candidates who are nominated by committee and by petition shall be placed first as a group on the presidential primary ballot with each candidate's respective position in that group determined by the provisions of the Ballot Positioning Act [repealed]. The ballot position for the uncommitted category shall be placed last on the presidential primary ballot.

B. The voter shall be able to cast his ballot for one of the presidential candidates of his party or for an uncommitted delegation. A vote of the latter kind shall express the preference for an uncommitted delegation from New Mexico to the national convention of that voter's party.

History: 1953 Comp., § 3-8-39, enacted by Laws 1977, ch. 230, § 7; 1980, ch. 13, § 3; 1980, ch. 43, § 3; 1988, ch. 17, § 6; 1978 Comp., § 1-8-59 recompiled as § 1-15A-8 by Laws 2011, ch. 137, § 109.

#### **ANNOTATIONS**

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

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-59 NMSA 1978 as 1-15A-8 NMSA 1978 effective July 1, 2011.

**Compiler's notes.** — The bracketed material was inserted by the compiler and is not part of the law. The Ballot Positioning Act was repealed in 1994. Prior to its repeal the act was compiled as 1-10A-1 to 1-10A-3 NMSA 1978. For present comparable provisions, see 1-8-43 NMSA 1978.

**Cross references.** — For position of names on ballot, see 1-10-3, 1-10-8 and 1-10-8.1 NMSA 1978.

### **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. Delegate pledge.**

A. No person selected as a delegate or alternate shall qualify to attend the national convention of his political party unless he files with the state chairman of his political party at least fifteen days prior to the convening of the applicable national party convention a written declaration of acceptance, signed by himself, in the form herein prescribed and the state chairman deposits this declaration of acceptance in the office of the secretary of state no later than ten days before convening of the applicable national convention.

B. The declaration of acceptance shall be in the form of an affidavit and shall contain the following information:

(1) the name, residence and post office address of the delegate or alternate delegate;

(2) a statement that he is a registered voter in New Mexico affiliated with the political party for which he is a delegate or alternate and that he was a registered voter and affiliated with that party on the day of the governor's primary election proclamation in the year in which he is a delegate to the national convention;

(3) a statement that he accepts his selection as a delegate or alternate to the national convention; and

(4) if delegates are pledged to specific candidates for the office of president, a pledge in the following form:

"As a delegate to the 20 \_\_\_\_\_ national convention of \_\_\_\_\_ party, I pledge myself to vote on the first ballot for the nomination of president by the \_\_\_\_\_ party as required by Section 1-8-60 NMSA 1978."

C. Any delegate representing the uncommitted category may vote for any candidate at the national convention or remain uncommitted.

History: 1953 Comp., § 3-8-41, enacted by Laws 1977, ch. 230, § 9; 1980, ch. 13, § 5; 1980, ch. 43, § 5; 2003, ch. 300, § 4; 1978 Comp., § 1-8-61 recompiled as § 1-15A-10 by Laws 2011, ch. 137, § 109.

### **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-61 NMSA 1978 as 1-15A-10 NMSA 1978 effective July 1, 2011.

**The 2003 amendment**, effective June 20, 2003, substituted "on the day of the governor's primary election proclamation" for "forty-two days prior to the presidential primary election held" near the middle of Paragraph B(2) and substituted "20..." for "19..." in Paragraph B(4).

### **1-15A-11. Penalty.**

It is unlawful for any alternate or delegate to fail to vote at the national party convention in accordance with the delegate pledge he signed as required by the Presidential Primary Act. Any alternate or delegate violating any of the provisions of the Presidential Primary Act is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-8-43, enacted by Laws 1977, ch. 230, § 11; 1978 Comp., § 1-8-63 recompiled as § 1-15A-11 by Laws 2011, ch. 137, § 109.

### **ANNOTATIONS**

**Recompilations.** — Laws 2011, ch. 137, § 109 recompiled former 1-8-63 NMSA 1978 as 1-15A-11 NMSA 1978 effective July 1, 2011.

## **ARTICLE 16**

### **State Constitutional Amendments and Other Questions Submitted**

#### **1-16-1. State constitutional amendments; application of Election Code.**

At all elections at which any proposed constitutional amendment or question is submitted to a vote of the electors, the election shall be held and conducted in accordance with the Election Code [Chapter 1 NMSA 1978].

**History:** 1953 Comp., § 3-16-1, enacted by Laws 1969, ch. 240, § 374.

## 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.

**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, 80 N.M. 720, 460 P.2d 250 (1969).

**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, 80 N.M. 720, 460 P.2d 250 (1969).

**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, 41 N.M. 474, 71 P.2d 140 (1937)(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, 34 N.M. 438, 283 P. 902 (1929)(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. Mayor of Roswell, 16 N.M. 340, 117 P. 846 (1911)(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. 1951-52 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. State constitutional amendments; ballots; special elections.**

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.

**History:** 1953 Comp., § 3-16-2, enacted by Laws 1969, ch. 240, § 375.

## **1-16-3. State constitutional amendments; certification.**



Whenever a proposed constitutional amendment or other question is to be submitted to the voters of the entire state, the secretary of state, not less than fifty-six days before the election at which it is to be submitted, shall certify the proposed constitutional amendment or question to the county clerk of each county.

**History:** 1953 Comp., § 3-16-3, enacted by Laws 1969, ch. 240, § 376; 1977, ch. 222, § 93; 1981, ch. 146, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional provision on the proposal and ratification of constitutional amendments, see N.M. Const., art. XIX, § 1.

### **1-16-4. State constitutional amendments; publication.**

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.

**History:** 1953 Comp., § 3-16-4, enacted by Laws 1969, ch. 240, § 377.

## ANNOTATIONS

**Cross references.** — For publication of proposed amendments, see N.M. Const., art. XIX, § 1.

**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*, 80 N.M. 720, 460 P.2d 250 (1969).

**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*, 80 N.M. 720, 460 P.2d 250 (1969).

**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. 1955-56 Op. Att'y Gen. No. 55-6181 (opinion rendered under former law).

### **1-16-5. State constitutional amendments; form of ballots.**

All ballots proposing constitutional amendments shall be in the form prescribed by the secretary of state.

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.

#### **ANNOTATIONS**

**Cross references.** — For absentee ballots, see 1-6-1 to 1-6-25 NMSA 1978.

For emergency paper ballots, see 1-12-43 to 1-12-69 NMSA 1978.

**The 2007 amendment**, effective July 1, 2007, eliminated the provision that specified the contents of emergency and provisional ballots and absentee ballots.

**The 2003 amendment**, effective July 1, 2003, inserted "and provisional" in the section heading and at the beginning of Subsection A.

### **1-16-6. State constitutional amendments; marking ballots.**

A voter desiring to mark the ballot for or against a proposed constitutional amendment shall do so in the manner specified in the instructions printed on the ballot.

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.

#### **ANNOTATIONS**

**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; inserted "or provisional" following "his emergency" near the beginning and deleted "emergency paper ballot or absentee" preceding "ballot" at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 343.

29 C.J.S. Elections § 174.

### **1-16-7. State constitutional amendments; ballot labels; form.**

The secretary of state shall prescribe the form in which state constitutional amendments shall appear on the ballot. Such form 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. The secretary of state may provide an analysis of the proposed constitutional amendment on the ballot. The ballot shall be printed in both English and Spanish.

**History:** 1953 Comp., § 3-16-6.1, enacted by Laws 1977, ch. 222, § 96; 1981, ch. 146, § 3.

### **1-16-8. Other questions.**

The form for ballots on questions other than proposed constitutional amendments to be submitted to the voters of the entire state shall be prescribed by the secretary of state. The form for ballots on those questions not statewide in application to be submitted to the voters of the county shall be furnished by the county clerk, and a copy of the resolution proposing such question shall be sent by the county clerk to the secretary of state not less than thirty days prior to the election. In each case the ballots shall conform as nearly as practicable to the form required for ballots on proposed constitutional amendments.

**History:** 1953 Comp., § 3-16-7, enacted by Laws 1969, ch. 240, § 380; 1977, ch. 222, § 97.

## **ANNOTATIONS**

**Cross references.** — For form of ballot on proposed constitutional amendment, see 1-16-5 NMSA 1978.

**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.'" 1949-50 Op. Att'y Gen. No. 50-5315 (opinion rendered under former law).

### **1-16-9. State constitutional amendments; single ballot.**

Proposed constitutional amendments or other questions submitted to the voters at any election shall be printed on one ballot only.

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.

#### **ANNOTATIONS**

**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. State constitutional amendments; sample ballots.**

At the time ballots are printed for special elections on proposed constitutional amendments or other questions, the secretary of state shall have sample ballots printed and furnished to the counties. The form and number of sample ballots furnished to each precinct shall be the same as required for sample ballots in general elections.

**History:** 1953 Comp., § 3-16-10, enacted by Laws 1969, ch. 240, § 383.

#### **ANNOTATIONS**

**Cross references.** — For sample ballots in general elections, see 1-10-10 NMSA 1978.

### **1-16-11. State constitutional amendments; expense.**

The expense incurred by the secretary of state in printing and distributing the ballots for proposed constitutional amendments or other questions to be furnished by him shall be paid by the state.

**History:** 1953 Comp., § 3-16-11, enacted by Laws 1969, ch. 240, § 384.

### **1-16-12. Repealed.**

## 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. Constitutional amendments; text provided.**

In any election in which a constitutional amendment is being considered, the secretary of state shall cause to be printed samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The secretary of state shall then distribute the sample constitutional proposals to the county clerk in each county, who in turn, will distribute them to the precincts in the same manner and number as sample ballots.

**History:** 1953 Comp., § 3-16-13, enacted by Laws 1975, ch. 287, § 1.

## **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 which is the object of the petition.

B. Within ten days after submission of the original draft and suggested popular name, the secretary of state shall:

(1) approve and certify the original draft of the petition, and approve and certify the suggested popular name or a more suitable and correct popular name; or

(2) disapprove the original draft and specify each deficiency not in compliance with the law.

**History:** 1953 Comp., § 3-17-8, enacted by Laws 1969, ch. 240, § 393.

### **ANNOTATIONS**

**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 fifteen days after it is filed in his office.

**History:** 1953 Comp., § 3-17-10, enacted by Laws 1969, ch. 240, § 395.

### **ANNOTATIONS**

**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. Campaign practices; primary election; expenditure of party money.**

A. No contribution of money, or the equivalent thereof, made directly or indirectly to any political party, to any political party committee, to members of any political party committee or to any person representing or acting on behalf of a political party, and no money in the treasury of any political party or political party committee shall be expended directly or indirectly in the aid of the nomination at a primary election of any one or more persons as against any one or more other persons of the same political party running in such primary election.

B. Any person who expends money, or is responsible for the expenditure of money, in violation of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 3-19-1, enacted by Laws 1969, ch. 240, § 405.

### **ANNOTATIONS**

**Cross references.** — For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

**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. 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.

Constitutionality of Corrupt Practices Act, 69 A.L.R. 377.

Contributions or subscriptions, construction of statute prohibiting solicitation or acceptance of, by public officer or employee, 85 A.L.R. 1146.

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. 1465.

Political advertising, constitutionality, construction and application of statute respecting, 168 A.L.R. 866.

29 C.J.S. Elections §§ 216, 329.

## **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. Campaign practices; printing or publishing campaign material without specifying sponsor; penalty.**

A. It is unlawful for any person, organization or political committee to publish or print any campaign advertising or communication which does not specify the name of the sponsor or the name of a responsible officer who authorized the printing or publication of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends only to handbills, petitions, circulars, letters or similar written material.

B. Any printing establishment shall identify itself as the printer of the campaign material.

C. Any person, organization or political committee violating the provisions of Subsection A or B of Section 1-19-16 NMSA 1978 is guilty of a fourth degree felony and shall be punished as provided in the Criminal Code [Chapter 30 NMSA 1978].

**History:** 1953 Comp., § 3-19-16.1, enacted by Laws 1973, ch. 401, § 1.

### **ANNOTATIONS**

**Cross references.** — For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

For penalty for fourth degree felony, see 31-18-15 NMSA 1978.

**Constitutionality.** — This section and 1-19-17 NMSA 1978 are clearly unconstitutional and unenforceable under the United States Supreme Court's ruling in *McIntyre v. Ohio*



Elections Comm'n, 514 U.S. 334, 115 S. Ct. 1511 (1995). 1997 Op. Att'y Gen. No. 97-01.

New Mexico could amend its current statutes or adopt a wholly new statute to prohibit false, fraudulent or libelous statements in campaign literature, regardless of whether the materials are published anonymously or not. 1997 Op. Att'y Gen. No. 97-01.

**Purpose for requirement.** — The apparent purpose for requiring that the names of the sponsor and the printer be printed on campaign material is to identify the persons responsible for the content of the information being conveyed. 1981 Op. Att'y Gen. No. 81-21.

**Section inapplicable to commercially available printed material.** — This section applies only to those printed materials which a candidate has actually caused to be printed or published for campaign purposes and not to commercially available printed material which is available for purchase by anyone for any purpose. 1981 Op. Att'y Gen. No. 81-21.

**Section inapplicable to printed sticker with picture but no writing.** — This section does not apply to a printed sticker containing a picture but no writing. 1981 Op. Att'y Gen. No. 81-21.

**Sticker's printer not liable.** — Persons who print or publish stickers which happen to be purchased by a candidate for use in a campaign cannot be liable for failing to identify the candidate or the printer on the sticker. 1981 Op. Att'y Gen. No. 81-21.

### **1-19-17. Campaign practices; circulation of campaign material without specifying sponsor; penalty.**

A. It is unlawful for any person, organization or political committee to circulate or distribute any campaign advertising or communication which does not specify the name of the sponsor of such material, in any election, special election, school district election or an election authorizing a bond issue. This prohibition extends to handbills, petitions, circulars or similar written material.

B. Any person, organization or political committee violating the provisions of Subsection A of Section 1-19-17 NMSA 1978 is guilty of a misdemeanor and shall be punished as provided in the Criminal Code [Chapter 30 NMSA 1978].

**History:** 1953 Comp., § 3-19-16.2, enacted by Laws 1973, ch. 401, § 2.

#### **ANNOTATIONS**

**Cross references.** — For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

For penalty for misdemeanor, see 31-19-1 NMSA 1978.

**Constitutionality.** — Section 1-19-16 NMSA 1978 and this section are clearly unconstitutional and unenforceable under the United States Supreme Court's ruling in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 115 S. Ct. 1511 (1995). 1997 Op. Att'y Gen. No. 97-01.

New Mexico could amend its current statutes or adopt a wholly new statute to prohibit false, fraudulent or libelous statements in campaign literature, regardless of whether the materials are published anonymously or not. 1997 Op. Att'y Gen. No. 97-01.

**Implied exclusion in 1-19-16 NMSA 1978 applicable to this section.** — This section and 1-19-16 NMSA 1978 may be read together so that the "campaign advertising or communication" referenced in 1-19-16 NMSA 1978 is the same as that referenced in this section. Since 1-19-16 NMSA 1978 necessarily implies that campaign material subject to identification requirements must be written material which a candidate has caused to be printed or published and excludes printed material which is commercially available to anyone, such exclusion would apply to this section as well. 1981 Op. Att'y Gen. No. 81-21.

## **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**

**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 [1-19-25 to 1-19-36 NMSA 1978]:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

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. "bank account" means an account in a financial institution located in New Mexico;

D. "campaign committee" means two 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;

E. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or:

(1) for a non-statewide office, 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 the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

F. "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 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;

G. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

H. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "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, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

K. "person" means an individual or entity;

L. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated,

organized or operated primarily for a political purpose; and "political committee" includes:

(1) political parties, political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;

(2) a single individual whose actions represent that the individual is a political committee; and

(3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) to conduct an advertising campaign for a political purpose;

M. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

N. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "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;

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

R. "statement of exception" or "statement" means the prescribed form subscribed and sworn to by a candidate to indicate that the candidate does not intend to raise or expend the minimum amount required for the filing of a report of expenditures and contributions as provided in Section 1-19-33 NMSA 1978.

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.

## ANNOTATIONS

**2009 amendments.** — Laws 2009, ch. 68, § 2, effective November 3, 2010, in Subsection L(1), added "political parties".

This section was also amended by Laws 2009, ch. 67, § 1, which deleted Subsection R defining "statement of exception". The section was set out as amended by Laws 2009, ch. 68, § 2. See 12-1-8 NMSA 1978.

**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.

**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.

### **1-19-26.1. Political committees; registration; disclosures.**

A. It is unlawful for any political committee that receives, contributes or expends in excess of five hundred dollars (\$500) in any calendar year to continue to receive or

make any contribution or expenditure for a political purpose unless that political committee appoints and maintains a treasurer and registers with the secretary of state.

B. A political committee shall register with the secretary of state within ten days of receiving, contributing or expending in excess of five hundred dollars (\$500) by paying a filing fee of fifty dollars (\$50.00) and filing a statement of organization under oath on a prescribed form showing:

(1) the full name of the political 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 political committee was organized;

(3) the name, address and relationship of any connected or associated organization or entity;

(4) the names and addresses of the officers of the committee; and

(5) an identification of the bank used by the committee for all expenditures or contributions made or received.

C. 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.

## ANNOTATIONS

**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).

## **1-19-26.2. Rules and regulations.**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [Chapter 12, Article 8 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

**History:** Laws 1997, ch. 112, § 1.

## **1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.**

A. A campaign committee or political committee that is required to register pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall not expend campaign or political committee funds to directly or indirectly pay for a telephone call without disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

- (1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and
- (2) advocates support for, or opposition to, a candidate for public office or ballot measure.

B. The campaign committee or political committee that pays for a call referred to in Subsection A of this section shall be disclosed in the call unless the organization that authorized the call and in whose name it is placed has filing obligations pursuant to the Campaign Reporting Act and the name announced in the call is either:

- (1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or
- (2) the name by which the organization or individual is commonly known.

C. A campaign committee or political committee that pays directly or indirectly for telephone calls as described in Subsection A of this section shall maintain a record of the script of the calls for at least ninety days following election day. If any of the calls qualifying pursuant to Subsection A of this section are recorded messages, a copy of the recording shall also be maintained for that period.



D. A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed by Subsection A or B of this section.

**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.

### **1-19-27. Reports required; proper filing officer.**

A. Except for those candidates and public officials who file a statement of no activity, all reporting individuals shall file with the proper filing officer a report of expenditures and contributions on a prescribed form.

B. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

C. The proper filing officer for filing reports of expenditures and contributions or statements of no activity is the secretary of state for all candidates and public officials.

D. The secretary of state shall develop or contract for services to develop an electronic reporting system for receiving and for public inspection of reports of expenditures and contributions and statements of no activity to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The electronic reporting system shall:

(1) enable a person to file reports online by filling out forms on the secretary of state's web site; and

(2) provide for encrypted transmissions.

**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.

## 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 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.

**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.

### **1-19-28. 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 proper filing officer 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.

#### **ANNOTATIONS**

**Cross references.** — For proper filing officer, see 1-8-25 NMSA 1978.

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 proper filing officer by 5:00 p.m. on 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 reporting individual's bank account has been closed and the other provisions specified in Subsection F 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) by 5:00 p.m. on 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) by 5:00 p.m. on 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) by 5:00 p.m. on 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) by 5:00 p.m. on 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;

(5) by 5:00 p.m. on 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. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for five hundred dollars (\$500) or more in a legislative or non-statewide judicial election, or two thousand five hundred dollars (\$2,500) or more in a statewide election, shall be reported to the proper filing officer either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed by 5:00 p.m. on 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; and

(6) by 5:00 p.m. on the thirtieth day after a primary, general or statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. If a candidate or public official has not received any contributions and has not made any expenditures since the candidate's or official's last report was filed with the proper filing officer, the candidate 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 and public officials who file a statement of no activity, each reporting individual 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 proper filing officer 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 account has been closed.

G. Each treasurer of a political committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has been closed.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] 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 proper filing officer 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. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the political committee using an electronic signature in conformance with the Electronic Authentication of Documents Act [Chapter 14, Article 15 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. 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 political 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.

## 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.

**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".

### **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).

## **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.**

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 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;

(2) the occupation or type of business of any person or entity 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 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 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: 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.

## 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.

**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.

**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 exception;
- (2) a report of expenditures and contributions;
- (3) an advisory opinion issued by the secretary of state;

(4) a document specified as a public record in the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]; and

(5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of exception submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.

**History:** 1978 Comp., § 1-19-32, enacted by Laws 1979, ch. 360, § 8; 1993, ch. 46, § 8; 1995, ch. 153, § 8; 2003, ch. 66, § 4.

## ANNOTATIONS

**Cross references.** — For Public Records Act, see 14-3-1 NMSA 1978 et seq.

**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 nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for

enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

History: 1978 Comp., § 1-19-32.1, enacted by Laws 1981, ch. 331, § 9; 1993, ch. 46, § 9; 1994, ch. 86, § 2; 1995, ch. 153, § 9; 2009, ch. 67, § 5.

## 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 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.**

## 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 committees; treasurer; bank account; anonymous contributions; contributions from special events.**

A. It is unlawful for the members of any political committee or any candidate to make any expenditure or solicit or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is constantly maintained; provided, however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; 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 separate bank account has been established and all receipts of money contributions and all expenditures of money are deposited in and disbursed from the one bank account maintained by the treasurer in the name of the candidate or political committee; provided that nothing in this section shall prohibit investments from the 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 disbursement 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 may be accepted in excess of 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 fifteen dollars (\$15.00) or less are sold or an event such as a coffee, tea or similar reception.

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 Internal Revenue Code of 1986, as amended.

**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.

## ANNOTATIONS

**Cross references.** — For Section 170 of the Internal Revenue Code of 1986, see 26 U.S.C. § 170.

**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 or a candidate for state legislator, or any agent on behalf of either, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

**History:** 1978 Comp., § 1-19-34.1, enacted by Laws 1993, ch. 46, § 12; 1995, ch. 153, § 12.

### **ANNOTATIONS**

**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.

### **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.**

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.

**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.

#### **ANNOTATIONS**

**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; binding arbitration; referrals for enforcement.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] of those duties. This includes advising all known reporting individuals at least annually of that act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and

inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act [Chapter 2, Article 1 NMSA 1978] or Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement.

**History:** 1978 Comp., § 1-19-34.4, enacted by Laws 1993, ch. 46, § 15; 1995, ch. 153, § 15; 1997, ch. 112, § 4.

## ANNOTATIONS



**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 reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], 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 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.

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 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 1995, ch. 153, § 19.

### **1-19-34.7. Contribution limitations; candidates; political committees.**

A. The following contributions by the following persons are prohibited:

(1) from a person, not including a political committee, to a:

(a) candidate for nonstatewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed two thousand three hundred dollars (\$2,300) during the primary election or two thousand three hundred dollars (\$2,300) during the general election;

(b) candidate for statewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or

(c) political committee in an amount that will cause that person's total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election; and

(2) from a political committee to:

(a) a candidate for office, including the candidate's campaign committee, in an amount that will cause the political committee's total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or

(b) another political committee in an amount that will cause that political committee's total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election.

B. 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.

C. 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.

D. On the day 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 year's 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 day after the following general election.

E. 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.

F. 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.

G. For the purposes of this section:

(1) "primary election" means the period beginning on the day after the general election for the applicable office and ending on the day of the primary for that office; and

(2) "general election" means the period beginning on the day after the primary for the applicable office and ending on the day of the general election for that office.

History: Laws 2009, ch. 68, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 68, § 6 made Laws 2009, ch. 68, § 1 effective November 3, 2010.

**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.

**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.

### **1-19-35. 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, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a false, intentionally incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five hundred dollars (\$500) for the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of exception shall be deemed timely filed only if it is received by the proper filing officer by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

History: 1978 Comp., § 1-19-35, enacted by Laws 1979, ch. 360, § 11; 1981, ch. 331, § 11; 1993, ch. 46, § 16; 1994, ch. 86, § 3; 1995, ch. 153, § 16; 1997, ch. 12, § 2; 1997, ch. 112, § 5; 2009, ch. 67, § 6.

## 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 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. Penalties; criminal enforcement.**

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] 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.

### **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 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.**

Sections 1 through 17 [1-19A-1 to 1-19A-17 NMSA 1978] of this act may be cited as the "Voter Action Act".

**History:** Laws 2003, ch. 14, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

#### **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 election" means an election in which there are more candidates for a position than the number to be elected to that position;

D. "covered office" means any office of the judicial department subject to statewide elections and the office of public regulation commissioner;

E. "election cycle" means the primary and general elections for the same term of the same covered office, beginning on the day after the last general election for the office and ending with the general election; the primary election cycle begins on the first day of the election cycle and ends on the day of the primary election; the general election begins on the day after the primary election and ends on the day of the general election;

F. "fund" means the public election fund;

G. "noncertified candidate" means either a candidate running for a covered office who does not choose to participate in the Voter Action Act and who is not seeking to be a certified candidate or a candidate who files a declaration of intent to participate but who fails to qualify;

H. "qualifying contribution" means a donation of five dollars (\$5.00) in the form of cash or a check or money order payable to the fund in support of an applicant candidate that is:

(1) made by a registered 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;

I. "qualifying period" means:

(1) for major party applicant candidates for covered offices, 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 independent and minor party candidates, the period beginning February 1 of the election year and ending that year at 5:00 p.m. on the filing date for independent or minor party candidates for the office for which the candidate is running;

J. "secretary" means the secretary of state or the office of the secretary of state; and

K. "seed money" means a contribution raised for the primary purpose of enabling applicant candidates to collect qualifying contributions and petition signatures.

History: Laws 2003, ch. 14, § 2; 2007 (1st S.S.), ch. 2, § 1.

## ANNOTATIONS

**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 candidate 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. An applicant candidate choosing to participate in the Voter Action Act shall submit a declaration of intent prior to collecting any qualifying 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. A candidate shall not be eligible to become an applicant candidate if the candidate has accepted contributions totaling 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.

**History:** Laws 2003, ch. 14, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

### **1-19A-4. Qualifying contributions.**

A. Applicant candidates shall obtain qualifying contributions as follows:

(1) for all statewide judicial elective offices, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state; and

(2) for the office of public regulation commissioner, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the district of the office for which the candidate is running.

B. Applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable that person to vote in the primary election.

C. Voters registered as independent are not excluded from making qualifying contributions but shall be registered within the statutory time frame as independent.

D. No payment, gift or anything of value shall be given in exchange for a qualifying contribution.

History: Laws 2003, ch. 14, § 4; 2007 (1st S.S.), ch. 2, § 2.

### ANNOTATIONS

**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-5. Seed money.**

A. An applicant candidate may collect seed money from individual donors and political action committees in amounts of no more than one hundred dollars (\$100) per donor or committee. An applicant candidate may contribute an amount of seed money from the applicant candidate's own funds up to the limits specified in Subsection H of this section.

B. An applicant candidate may collect and spend seed money during the sixty days immediately preceding the qualifying period and throughout the qualifying period.

C. An applicant candidate may not collect seed money from a corporation, association or partnership formed under state law or from labor organizations.

D. An applicant candidate may not collect or spend seed money for any purpose after certification and before the end of the election cycle for which the candidate was certified, but after the election cycle may carry forward to the next election cycle any unspent seed money to be used as seed money.

E. If a certified candidate is defeated or is elected and decides not to run again as an applicant candidate, any unspent seed money shall be forfeited to the fund.

F. After becoming an applicant candidate and prior to certification, an applicant candidate shall not accept contributions, except for seed money or qualifying contributions.

G. An incumbent, other than a public regulation commissioner, elected prior to 2008 who was not an applicant candidate when elected but who files a declaration of intent to become an applicant candidate in accordance with the Voter Action Act may transfer from the applicant candidate's campaign fund for use as seed money up to the limits for contributions and expenditures specified in Subsection H of this section.

H. An applicant candidate shall limit seed money contributions and expenditures to five thousand dollars (\$5,000).

History: Laws 2003, ch. 14, § 5; 2007 (1st S.S.), ch. 2, § 3.

### ANNOTATIONS

**The 2007 amendment**, effective June 28, 2007, provided that Subsection G applies to an incumbent, other than a public regulation commissioner, who was elected prior to 2008.

**The Voter Action Act does not violate the First Amendment right of free speech.**

— The limitation on the amount of money that may be contributed by an applicant candidate from the candidate's own funds does not violate constitutional rights to free speech. *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952.

**Scope of "seed money"**. — An applicant candidate's personal expenditures on a campaign are considered to be "contributions" under the Voter Action Act, subject to the \$5000 limit, regardless of how the candidate may characterize those funds or their intended use. *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952.

Where an applicant candidate contributed more than \$8,000 of the candidate's own money to the candidate's election campaign, while simultaneously applying for public funds, the candidate violated the Voter Action Act. *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952.

## **1-19A-6. Certification.**

A. Upon receipt of a final submittal of qualifying contributions by an applicant candidate, the secretary shall determine 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) submitted the appropriate number of qualifying contributions;
- (3) qualified as a candidate pursuant to other applicable state election law;
- (4) complied with seed money 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 he decides not to accept such funds for the general election.

**History:** Laws 2003, ch. 14, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

#### **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 for that candidate's campaign-related purposes in the election cycle in which the money was distributed.

B. 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.

C. A certified candidate shall limit total campaign expenditures and debts to the amount of money distributed to that candidate from the fund. A certified candidate shall not accept contributions or loans from any other source except the certified candidate's political party, as specified in Section 1-19A-8 NMSA 1978.

D. A certified candidate shall return to the secretary, within thirty days after the primary election, any amount that is unspent or unencumbered by the date of the primary election for direct deposit into the fund.

E. A certified candidate shall return to the secretary, within thirty days after the general election, any amount that is unspent or unencumbered by the date of the general election for direct deposit into the fund.

**History:** Laws 2003, ch. 14, § 7; 2007 (1st S.S.), ch. 2, § 4.

### **ANNOTATIONS**

**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.

B. Applicant candidates shall file a report listing seed money 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 expenditures according to the campaign reporting requirements specified in the Election Code [Chapter 1 NMSA 1978].

E. In addition to the campaign contribution and expenditure reports specified in the Election Code, all noncertified candidates who have as an opponent a certified candidate shall report to the secretary ten days before the primary and general elections the amount of money spent by that noncertified candidate. This report shall include all previously unreported transactions through 5:00 p.m. two days before the report is due.

F. A person or political committee that makes expenditures to influence a race involving a certified candidate shall report to the secretary the amount that person or political committee has spent. These reports shall include all previously unreported transactions through 5:00 p.m. two days before the report is due, and shall be submitted as follows:

(1) for the primary election, by 5:00 p.m. on the second Monday in May, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election; and

(2) for the general election, by 5:00 p.m. the first Tuesday in October, by 5:00 p.m. on the eleventh day before the election and by 5:00 p.m. on the Thursday before the election.

**History:** Laws 2003, ch. 14, § 9.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

### **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 election 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 seed money that cannot be used for any other purpose;
- (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.

D. A subaccount shall be established in the fund, and money in the subaccount shall only be used to pay the costs of carrying out the provisions of the Voter Action Act related to public regulation commission elections.

E. Three hundred thousand dollars (\$300,000) per year shall be collected and deposited in the subaccount for public regulation commission elections as follows:

- (1) one hundred thousand dollars (\$100,000) from inspection and supervision fees collected pursuant to Section 62-8-8 NMSA 1978;
- (2) one hundred thousand dollars (\$100,000) from utility and carrier inspection fees collected pursuant to Section 63-7-20 NMSA 1978; and
- (3) one hundred thousand dollars (\$100,000) from the insurance premium tax collected pursuant to Section 59A-6-2 NMSA 1978.

History: Laws 2003, ch. 14, § 10; 2007 (1st S.S.), ch. 2, § 5.

#### **ANNOTATIONS**

**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 August 1, 2007, the secretary shall determine the amount of money to be distributed to each certified candidate for the election cycle ending with the general election in 2008, based on the type of election and the provisions of Subsections B through F of this section.

B. For contested primary elections, the amount of money to be distributed to a certified candidate is equal to the following:

(1) for the office of public regulation commissioner, twenty-five cents (\$.25) for each voter of the candidate's party in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals, fifteen cents (\$.15) for each voter of the candidate's party in the state.

C. For uncontested primary elections, the amount of money to be distributed to a certified candidate is equal to fifty percent of the amount specified in Subsection B of this section.

D. For contested general elections, the amount of money to be distributed to a certified candidate is equal to the following:



(1) for the office of public regulation commissioner, twenty-five cents (\$.25) for each voter in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals, fifteen cents (\$.15) for each voter in the state.

E. 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. If a general election race that is initially uncontested later becomes contested because of the qualification of an independent or minor party candidate to appear on the ballot for that race, an additional amount of money shall be distributed to the certified candidate to make that candidate's total distribution amount equal to the amount distributed pursuant to Subsection D of this section.

F. 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 increase the total amount by twenty percent to provide funds for additional matching funds in the primary election. The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. This estimate shall be increased by twenty percent to provide funds for additional matching funds in the general election. If the total amount to be distributed in the primary election cycle, plus the added twenty percent and the estimated total amount to be distributed in the general election cycle, plus the added twenty percent, all 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.

G. If the allocation specified in Subsection F 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 E 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.

H. At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through E of this section and shall consider and account for inflation in the evaluations.

I. No money shall be distributed to candidates in judicial retention elections. 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.

History: Laws 2003, ch. 14, § 13; 2007 (1st S.S.), ch. 2, § 6.

## ANNOTATIONS

**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. Matching funds.**

When a certified or noncertified candidate has one or more opponents who are certified candidates and the candidate's campaign finance report or group of reports shows that the sum of the candidate's expenditures and obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate, exceeds the amount distributed to an opposing certified candidate, the secretary shall issue immediately to any opposing certified candidate an additional amount equivalent to the excess amount reported by the opposing candidate. Total matching funds to a certified candidate in an election are limited to twice the amount originally distributed to that candidate pursuant to Section 1-19A-13 NMSA 1978.

History: Laws 2003, ch. 14, § 14; 2007 (1st S.S.), ch. 2, § 7.

## ANNOTATIONS

**The 2007 amendment**, effective June 28, 2007, made certified candidates eligible for matching funds.

### **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-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 secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine or transmit the finding to the attorney general for prosecution. In determining whether a certified candidate is in violation of the expenditure limits of that act, the secretary may consider as a mitigating factor any circumstances out of the candidate's control.

B. A person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the secretary or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if he is a certified candidate, shall return to the fund all money distributed to that candidate.

**History:** Laws 2003, ch. 14, § 17.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 14, § 23 made the act effective July 1, 2003.

**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 unlawful expenditures in aid of nomination, see 1-19-1 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, 48 N.M. 294, 150 P.2d 119 (1944)(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. 1951-52 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 [6-15-23 to 6-15-28 NMSA 1978].

**History:** 1953 Comp., § 3-20-1.1, enacted by Laws 1975, ch. 255, § 123.

### **1-20-3. Registration offenses.**

Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

A. signing or offering to sign a certificate of registration when not a qualified elector;

B. falsifying any information on the certificate of registration;

C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or

D. destroying the certificate of registration of any qualified elector, or removing such certificate from its proper binder or file, except as provided in the Election Code [Chapter 1 NMSA 1978].

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 or ballot box, or possession of an imitation or duplicate thereof, or



making or causing to be made any imitation or duplicate thereof, unless authorized by the Election Code [Chapter 1 NMSA 1978].

Whoever commits unlawful possession of keys is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-20-5, enacted by Laws 1969, ch. 240, § 431.

### **1-20-7. Unlawful possession of absentee ballot.**

Unlawful possession of absentee ballot consists of the possession at any time of absentee ballot materials when not authorized by the Election Code [Chapter 1 NMSA 1978] to be in possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or an absentee ballot return.

Whoever commits unlawful possession of absentee ballot is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-20-5.1, enacted by Laws 1971, ch. 111, § 1; 1979, ch. 378, § 17.

## **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.

**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 voting on basis of falsely executed statement of eligibility to vote as constituting fraudulent voting, see 1-12-8 NMSA 1978.

For fraudulent and double voting as a fourth degree felony, see 1-12-9 NMSA 1978.

For delivery of two or more emergency paper ballots folded together as fourth degree felony, see 1-12-58 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*, 48 N.M. 294, 150 P.2d 119 (1944)(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*, 48 N.M. 294, 150 P.2d 119 (1944) (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, 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

**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*, 48 N.M. 294, 150 P.2d 119 (1944)(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 consists of willfully advancing, paying, or causing to be paid, or promising, directly or indirectly, any money or other valuable consideration, office or employment, to any person for the following purposes connected with or incidental to any election:

A. to induce such person, if a voter, to vote or refrain from voting for or against any candidate, proposition, question or constitutional amendment;

B. to induce such person, if a precinct board member or other election official, to mark, alter, suppress or otherwise change any ballot that has been cast, any election return, or any certificate of election; or

C. to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

Whoever offers a bribe is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-20-9, enacted by Laws 1969, ch. 240, § 435.

## ANNOTATIONS

**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*, 6 N.M. 643, 30 P. 936 (1892)(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**

**Cross references.** — For campaign expenditures, see 1-19-1 NMSA 1978 et seq.

**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*, 6 N.M. 643, 30 P. 936 (1892)(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 any member of a precinct board, voter, challenger or watcher by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation, upon



any voter, precinct board member, challenger or watcher for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the election or Election Code [Chapter 1 NMSA 1978].

Whoever commits intimidation is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-20-12, enacted by Laws 1969, ch. 240, § 438.

### **ANNOTATIONS**

**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

**Cross references.** — For campaign practices, see 1-19-1 NMSA 1978 et seq.

**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:

(1) any person other than a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election observer, an election official having business in the polling place or a person authorized by the Election Code [Chapter 1 NMSA 1978] to give assistance to a voter who, during the conduct of the election, approaches nearer than fifty feet from the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place; or

(2) any person who willfully blocks the entrance to a polling place so as to prevent free ingress and egress.

B. A person conducting lawful, non-election-related business nearer than fifty feet from the door through which voters may enter to vote is not guilty of obstructing a polling place, provided the person does not willfully block the entrance to the polling place.

C. Whoever obstructs the polling place is guilty of a petty misdemeanor.

History: 1953 Comp., § 3-20-15, enacted by Laws 1969, ch. 240, § 441; 2011, ch. 137, § 105.

### 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 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 [1-6-1 to 1-6-18 NMSA 1978].

**History:** 1953 Comp., § 3-20-16, enacted by Laws 1969, ch. 240, § 442; 1975, ch. 255, § 124; 2001, ch. 46, § 3.

## 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 willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board, or the 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

**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, 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

**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 precinct board while performing his official duties on election day. Unlawful possession also consists of the use, possession or carrying of alcoholic liquor within two hundred feet of the polling place during any election.

Whoever commits unlawful possession of alcoholic liquors is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 3-20-19, enacted by Laws 1969, ch. 240, § 445.

## **1-20-22. Violation of Election Code; general penalty.**

If the Election Code [Chapter 1 NMSA 1978] does not impose a specific penalty for the violation of a provision prohibiting a specific act, whoever knowingly commits such violation is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 3-20-20, enacted by Laws 1969, ch. 240, § 446.

### **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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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*, 93 N.M. 657, 604 P.2d 123 (1979).

**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 willful violation of the Election Code by any state or county officer or by any deputy or assistant thereto, or the 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 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

**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*, 52 N.M. 258, 197 P.2d 421 (1948)(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*, 5 N.M. 590, 25 P. 930 (1891)(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.

# ARTICLE 21

## Federal Voting Rights Compliance

### 1-21-1. Short title.

This act [Chapter 1, Article 21 NMSA 1978] may be cited as the "Federal Voting Rights Compliance Act".

**History:** 1953 Comp., § 3-21-1, enacted by Laws 1971, ch. 322, § 1.

### 1-21-2. Definitions.

As used in the Federal Voting Rights Compliance Act:

A. "state" includes the District of Columbia;

B. "new resident" means any citizen of the United States not qualified to vote in New Mexico by reason of his period of residence in this state who, immediately prior to his removal to New Mexico, was a citizen of another state and who has been a resident of this state for not less than thirty days immediately prior to a presidential election and who will be eighteen years of age or over on the day of such election;

C. "former resident" means any citizen of the United States not qualified to vote in another state by reason of his period of residence in such state who, immediately prior to his removal to such state, was a citizen of New Mexico who, had he remained in New Mexico, would have qualified to vote in a presidential election and who has been a resident of such other state for less than thirty days immediately prior to a presidential election;

D. "federal election" means any general election, primary election or special election to fill a vacancy in the office of representative in congress;

E. "federal officers" means presidential electors, vice presidential electors, president, vice president, United States senator and United States representative in congress;

F. "federal ballot" means a ballot containing only the names of federal officers to be voted for in a federal election;

G. "presidential election" means any primary election or general election held for the purpose of voting for electors for president and vice president or for president and vice president;

H. "presidential ballot" means a ballot containing only the names of presidential electors, vice presidential electors, or president and vice president; and



I. "presidential officers" means presidential electors, vice presidential electors, president and vice president.

**History:** 1953 Comp., § 3-21-2, enacted by Laws 1971, ch. 322, § 2; 1973, ch. 138, § 4.

### **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.

## ANNOTATIONS

**Cross references.** — For form of absentee ballots, see 1-6-7 NMSA 1978.

### **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.**

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**

**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 22**

### **School Election Law**

#### **1-22-1. Short title.**

Sections 1-22-1 through 1-22-19 NMSA 1978 may be cited as the "School Election Law".

**History:** 1978 Comp., § 1-22-1, enacted by Laws 1985, ch. 168, § 3.

### **ANNOTATIONS**

**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 School Election Law:

- A. "board" means the governing authority of the local school district;
- B. "county clerk" means the clerk of each county in which the school district is situate;
- C. "proper filing officer" means the county clerk or, in the case of a multicounty school district, the clerk of the county in which the administrative office of the school district is situate;

D. "magistrate" means the magistrate whose office is situated in the municipality where the administrative office of the school district is located or in close proximity to the municipality;

E. "school district election" means a regular or special school district election but does not include a recall election; and

F. "superintendent" means the superintendent of schools of the local school district.

**History:** 1978 Comp., § 1-22-2, enacted by Laws 1985, ch. 168, § 4; 1987, ch. 249, § 45; 1999, ch. 267, § 33.

### ANNOTATIONS

**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. School district elections; qualifications of candidates.

A. A school district election shall be held in each school district to elect qualified persons to membership on a local school board. No person shall become a candidate for membership on a board unless his record of voter registration shows that he is a qualified elector of the state, physically resides in the school district in which he is a candidate and physically resided in the district on the date of the school board's proclamation calling a regular school district election.

B. A regular school district election shall be held in each school district on the first Tuesday in February of each odd-numbered year.

C. A school district election held at any time other than the date for the regular school district election shall be a special school district election.

D. Except as otherwise provided in the School Election Law, school district elections shall be called, conducted and canvassed as provided in the Election Code [Chapter 1 NMSA 1978].

**History:** 1978 Comp., § 1-22-3, enacted by Laws 1985, ch. 168, § 5; 1997, ch. 252, § 1.

### ANNOTATIONS

**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).

#### **1-22-4. Regular election; proclamation; publication.**

A. The board shall by resolution issue a public proclamation in Spanish and English calling a regular school district election within the school district on the date prescribed by the School Election Law. The proclamation shall be filed by the superintendent with the county clerk of record on the last Tuesday in November of the even-numbered year immediately preceding the date of the election.

B. The proclamation shall specify:

- (1) the date when the election will be held;
- (2) the positions on the board 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;
- (5) the questions to be submitted to the voters;
- (6) the precincts in each county in which the election is to be held and the location of each polling place;
- (7) the hours each polling place will be open; and
- (8) the date and time of the closing of the registration books by the county clerk of record as required by law.

C. After filing the proclamation with the county clerk of record and not less than fifty days before the date of the election, the county clerk of record shall publish the proclamation at least once in a newspaper of general circulation within the school district. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

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.

#### **ANNOTATIONS**



**Cross references.** — For the federal Voting Rights Act of 1965, see 42 U.S.C. § 1973 et seq.

**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. Special election; proclamation; publication.**

A. Whenever a special school district election is to be called or is required by law, the board shall by resolution issue a public proclamation in Spanish and English calling the election. The proclamation shall forthwith be filed by the superintendent with the county clerk of record.

B. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the positions on the board 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;
- (5) the questions to be submitted to the voters;
- (6) the precincts in each county in which the election is to be held and the location of each polling place;
- (7) the hours each polling place will be open; and
- (8) the date and time of the closing of the registration books by the county clerk of record as required by law.

C. After filing the proclamation with the county clerk of record and not less than fifty days before the date of the election, the county clerk of record shall publish the proclamation at least twice in a newspaper of general circulation in the school district. The publication of the proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

**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.

## ANNOTATIONS

**Cross references.** — For the federal Voting Rights Act of 1965, see 42 U.S.C. § 1973 et seq.

**The 1991 amendment**, effective April 2, 1991, inserted "in Spanish and English" in Subsection A and substituted "at least twice" for "once each week for four consecutive weeks" in the first sentence in Subsection C.

### **1-22-6. Precincts; consolidation; polling places.**

A. The same precincts that are used in a general election shall be used in a school district election, provided that:

(1) if a precinct lies partly within and partly outside of a school district, the part of the precinct lying within the school district constitutes a precinct for a school district election; and

(2) all of the area within the exterior boundaries of a school district may constitute one precinct for a school district election.

B. In the event that only one candidate has filed a declaration of candidacy for each position to be filled at an election and no declared write-in candidates have filed for any position and there are no questions or bond issues on the ballot, only one polling place for the election shall be designated and it shall be in the office of the county clerk or a designated polling place in the school district of the county in which the school district is located.

C. Except as otherwise provided in the School Election Law, the county clerk shall consolidate precincts for a school district election as provided in the proclamation for that election and shall provide for a polling place within each precinct or consolidated precinct.

**History:** 1978 Comp., § 1-22-6, enacted by Laws 1985, ch. 168, § 8; 1989, ch. 2, § 1.

### **1-22-7. Declaration of candidacy; filing date; penalty.**

A. A candidate for a school board position that will be filled at a regular school district election shall file a declaration of candidacy with the proper filing officer during the period commencing at 9:00 a.m. on the third Tuesday in December of the even-numbered year immediately preceding the date of the regular school district election and ending at 5:00 p.m. on the same day.

B. A candidate for a school board position that will be filled at a special school district election shall file a declaration of candidacy with the proper filing officer during

the period commencing at 9:00 a.m. on the forty-eighth day before the election and ending at 5:00 p.m. on the same day.

C. A candidate shall file for only one school board position during a filing period.

D. Whoever knowingly makes a false statement in his 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.

### ANNOTATIONS

**Cross references.** — For sentencing for felonies, see 31-18-15 NMSA 1978.

**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 Precinct No. \_\_\_\_\_ of the county of \_\_\_\_\_, State of New Mexico. I reside at \_\_\_\_\_ and was a resident at that place on the date of the school board's proclamation calling the election for which I am a candidate;

I am a qualified elector of the State of New Mexico residing within \_\_\_\_\_ school district;

I desire to become a candidate for the office of \_\_\_\_\_, Position No. \_\_\_\_\_ at the school district election to be held on the date set by law;

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.

\_\_\_\_\_  
(Declarant)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(Residence Address)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_.

(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.

### ANNOTATIONS

**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.

### 1-22-9. Withdrawal of candidates.

A candidate for membership on the board may file an affidavit with the proper filing officer for the district in which he is a candidate withdrawing his candidacy in the election. The affidavit shall be filed before 5:00 p.m. on the thirty-fifth day before the date of the school district election. The county clerk shall not place on the ballot the name of any person properly filing the affidavit of withdrawal.

**History:** 1978 Comp., § 1-22-9, enacted by Laws 1985, ch. 168, § 11.

### 1-22-10. Ballots.

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is a registered qualified elector of the state residing within the school district. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the School Election Law, the proper filing officer shall place the candidate's

name on the ballot for the position specified in the declaration of candidacy. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

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

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

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

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

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

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

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

(2) school district elections in which only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for any position and there are no questions or bond issues on the ballot and notwithstanding any other provision in the Election Code [Chapter 1 NMSA 1978].

History: 1978 Comp., § 1-22-10, enacted by Laws 1985, ch. 168, § 12; 1993, ch. 4, § 1; 2009, ch. 150, § 35.

## **ANNOTATIONS**

**Cross references.** — For the federal Voting Rights Acts of 1965, see 42 U.S.C. § 1973 et seq.

**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.

### **1-22-11. Publication.**

The proper filing officer for the district shall issue and publish the proclamation listing the name of each candidate for membership on the board, each question to be submitted to the voters of the school district and the names of the precinct board members of the school district. The publication shall be made once each week for two successive weeks, with the last publication being made within seven days but not later than two days before the date of the school district election. The names of the candidates shall be published in the same order and for the same positions as will appear on the ballot. The publication shall be in a newspaper of general circulation in the school district and shall conform to the provisions of the federal Voting Rights Act of 1965, as amended. The cost of the publication shall be paid by the school district.

**History:** 1978 Comp., § 1-22-11, enacted by Laws 1985, ch. 168, § 13; 1987, ch. 249, § 48; 1991, ch. 105, § 42.

### **ANNOTATIONS**

**Cross references.** — For the federal Voting Rights Acts of 1965, see 42 U.S.C. § 1973 et seq.

**The 1991 amendment**, effective April 2, 1991, added "and the names of the precinct board members of the school district" at the end of the first sentence and made a related stylistic change.

### **1-22-12. Conduct of elections.**

A. Except as otherwise provided in the School Election Law, the county clerk shall administer and conduct school district elections pursuant to the provisions of the Election Code [Chapter 1 NMSA 1978] for the conduct of general elections.

B. Precinct board members for each polling place shall be appointed by the county clerk from among those persons who meet the qualifications set forth in Section 1-2-7 NMSA 1978 and who reside within the school district. The number of members on each precinct board shall be as provided in Section 1-2-12 NMSA 1978. Vacancies on election day shall be filled as provided in Section 1-2-15 NMSA 1978.

C. In the event that only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for any position and there are no questions or bond issues on the ballot, the county clerk shall perform the duties of the precinct board and no other precinct board shall be appointed.

D. All costs of school district elections shall be paid by the school district.

**History:** 1978 Comp., § 1-22-12, enacted by Laws 1985, ch. 168, § 14; 1993, ch. 4, § 2.

### **ANNOTATIONS**

**The 1993 amendment**, effective January 29, 1993, added Subsection C and redesignated former Subsection C as Subsection D.

#### **1-22-13. Challengers; watchers.**

Upon petition filed with the county clerk, any candidate for membership on the board may:

A. appoint one person as challenger for each precinct in the school district election who shall have the powers and be subject to the restrictions provided for challengers in the Election Code [Chapter 1 NMSA 1978]; and

B. appoint one person as a watcher for each precinct in the school district election who shall have the powers and be subject to the restrictions provided for watchers in the Election Code.

**History:** 1978 Comp., § 1-22-13, enacted by Laws 1985, ch. 168, § 15.

#### **1-22-14. Votes required.**

A. The candidate receiving a plurality of the votes cast for a designated position on the board shall be elected to that designated position.

B. All questions submitted to the voters shall be decided by a majority of the voters voting on the question.

**History:** 1978 Comp., § 1-22-14, enacted by Laws 1985, ch. 168, § 16.

#### **1-22-15. Canvassing board; duties.**

A. The canvassing board for the canvass of the results of a school district election shall be composed of the superintendent, the county clerk of record who is the proper filing officer and the designated magistrate or the presiding judge of the metropolitan court, as the case may be, of the county in which the administrative office of the school district is situate.

B. Ballots cast in each county in which the school district is situate shall be transported by the presiding judge of the precinct board upon the closing of the polls to the office of the proper filing officer. Each ballot box shall have two locks. The key to one lock on each ballot box and one copy of the signature roster shall at that time be placed in a stamped, addressed envelope provided for that purpose and shall be mailed to the designated magistrate or the presiding judge of the metropolitan court, as the case may be, of the county in which the administrative office of the school district is situate.

C. Within three days after the date of the school district election, the canvassing board shall meet in the office of the proper filing officer and shall:

(1) canvass the returns in the same manner as county election returns are canvassed;

(2) determine the total number of persons in the school district voting in the election; and

(3) issue a certificate of canvass of the results of the election and send one copy of the certified results:

(a) to the board;

(b) to the secretary of state; and

(c) to the proper filing officer to be filed in his office.

D. The canvassing board shall issue a certificate of election to each candidate which it determines to be elected.

E. The county clerk of record shall cause the results of the election to be published once in a newspaper of general circulation in the school district.

**History:** 1978 Comp., § 1-22-15, enacted by Laws 1985, ch. 168, § 17; 1987, ch. 249, § 49; 1987, ch. 338, § 3.

## **1-22-16. Election contests.**

The district court shall entertain election contests for any position on the board or on any question placed on the school district election ballot. The procedure to be followed



in contest cases shall be the same as provided by the Election Code [Chapter 1 NMSA 1978] for contests for candidates for county offices, including the recount of ballots.

**History:** 1978 Comp., § 1-22-16, enacted by Laws 1985, ch. 168, § 18.

### **1-22-17. Records.**

The returns and certificates of the result of the canvass are public documents, subject to inspection during the customary hours and days of business. Signature rosters and tally sheets may be destroyed three years after the election to which they apply. The certificate of results of the canvass of the election shall thirty days after the election or immediately after any contest has been settled by the court be placed on file as a permanent record in the state records center. A copy of the certificate of results of the canvass of the election shall be kept on file in the office of the proper filing officer for a period of three years.

**History:** 1978 Comp., § 1-22-17, enacted by Laws 1985, ch. 168, § 19; 1987, ch. 249, § 50.

## **ANNOTATIONS**

**Cross references.** — For the state records center, see 14-3-8 NMSA 1978.

### **1-22-18. Write-in candidates.**

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

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

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

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

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

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

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

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

History: 1978 Comp., § 1-22-18, enacted by Laws 1985, ch. 168, § 20; 2009, ch. 150, § 36.

## ANNOTATIONS

**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. Absentee voting.

A. A voter may vote in a school district election by absentee ballot for all candidates and on all questions appearing on the ballot in his precinct as if he were casting his ballot in person at the polling place on election day.

B. The provisions of the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978] of the Election Code [Chapter 1 NMSA 1978] apply to absentee voting in school district elections, provided that absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the twenty-fifth day preceding the election until 5:00 p.m. on the Friday immediately prior to the date of the election. Absentee ballots shall be printed at least thirty days prior to the date of the election. Provisions may be made by the board in the proclamation for absentee voting by electronic voting machine from 8:00 a.m. on the twentieth day preceding an election until 5:00 p.m. on the Friday immediately prior to the date of the election.

C. A regular precinct board may be designated to serve as the absent voter precinct board. A member of the absent voter precinct board shall receive the same compensation as a regular precinct board member. A regular precinct board member

who also serves as a member of the absent voter precinct board shall not be entitled to extra compensation for serving on the absent voter precinct board.

**History:** 1978 Comp., § 1-22-19, enacted by Laws 1985, ch. 168, § 21; 1987, ch. 249, § 51; 1999, ch. 267, § 35.

## ANNOTATIONS

**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.

## 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, who either has filed a declaration of candidacy or has received contributions or made expenditures of five hundred dollars (\$500) or more or authorized another person or campaign committee to receive contributions or make expenditures of five hundred dollars (\$500) or more for the purpose of seeking election to a covered office;

C. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or campaign committee;

D. "covered office" means the position of board of education member of a school district that has an enrollment of twelve thousand students or more or the position of board member of a community college organized or operating pursuant to the provisions of Chapter 21, Article 13 or Article 16 NMSA 1978;

E. "election cycle" means the period beginning thirty days after an election for an office and ending on 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.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

### **1-22A-3. Reports required; time and place of filing.**

A. A candidate or campaign committee that has received contributions or made expenditures of five hundred dollars (\$500) or more shall file with the secretary of state a report of all contributions received and expenditures made on a prescribed form, and the report shall be filed in the same or similar electronic system as that used for the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]. Except as otherwise provided in this section, all reports pursuant to the School District Campaign Reporting Act shall be filed electronically and electronically authenticated by the candidate using an electronic signature in conformance with the Electronic Authentication of Documents

Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [14-16-1 to 14-16-19 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 second Monday in April.

C. If a reporting date set by Subsection B of this section falls on a weekend or 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 6 of the School District Campaign Reporting Act; 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.

## **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 180, § 11 made the School District Campaign Reporting Act effective July 1, 2013.

#### **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 through 1-19-36 NMSA 1978], Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [Chapter 10, Article 16A 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 through 1-19-36 NMSA 1978].

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the School District Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars (\$50.00) for each violation not to exceed five thousand dollars (\$5,000).

History: Laws 2013, ch. 180, § 8.

#### **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 through 1-19-36 NMSA 1978]; or

F. disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

History: Laws 2013, ch. 180, § 10.

### **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**

#### **1-23-1. Short title.**

This act [Chapter 1, Article 23 NMSA 1978] may be cited as the "Mail Ballot Election Act".

History: Laws 1987, ch. 160, § 1.

#### **1-23-2. Definition.**

As used in the Mail Ballot Election Act, "local government" means any county, school district or incorporated municipality.

**History:** Laws 1987, ch. 160, § 2.

### **1-23-3. Election by all-mailed ballots.**

Notwithstanding any other provision of law and regardless of the number of eligible voters within its boundaries, a local government may, by resolution of its governing body, conduct by all-mailed ballot any bond election, any election on the imposition of a mill levy or a property tax rate for a specified purpose or any special election at which no candidates are to be nominated for or elected to office.

**History:** Laws 1987, ch. 160, § 3; 1989, ch. 73, § 1.

### **1-23-4. Law governing.**

A. Except as otherwise provided in the Mail Ballot Election Act, mail ballot elections shall be conducted in accordance with the provisions of the local government's absentee voter law.

B. If the local government does not have an absentee voter law, the mail ballot election shall be called, conducted and canvassed as provided in the Election Code.

**History:** Laws 1987, ch. 160, § 4; 2011, ch. 137, § 106.

## **ANNOTATIONS**

**The 2011 amendment**, effective July 1, 2011, provided for calling, conducting, and canvassing mail ballot elections when a local government does not have an absentee voter law.

### **1-23-5. No polling place.**

Upon the adoption of a resolution by the governing body to conduct an election by an all-mailed ballot, each registered voter of the local government shall be mailed an absentee ballot along with a statement that there will be no polling place for the election. The voter shall not be required to file an application for the absentee ballot. The ballot shall be mailed to each voter no earlier than the thirty-fifth day prior to the election, and the mailing shall be completed by the fifth day before the election.

**History:** Laws 1987, ch. 160, § 5; 1989, ch. 73, § 2.

### **1-23-6. Notice to voters.**

The local government election official may include in the mailing set forth in Section 5 [1-23-5 NMSA 1978] of the Mail Ballot Election Act a printed notice to the voters informing the voters that they shall return the voted ballot by mail.

**History:** Laws 1987, ch. 160, § 6.

### **1-23-6.1. Checklist of registered voters.**

The local government official shall prepare a checklist of registered voters in the county. The checklist of registered voters shall be marked indicating that the voter has returned his all mail ballot immediately upon receipt.

**History:** 1978 Comp., § 1-23-6.1, enacted by Laws 1991, ch. 105, § 43.

### **1-23-7. Mail ballot election not to be combined with other elections.**

Mail ballot elections shall be used exclusively for voting in those elections specified in Section 1-23-3 NMSA 1978 and shall not be used in connection with elections at which candidates are to be nominated for or elected to office.

**History:** Laws 1987, ch. 160, § 7; 1989, ch. 73, § 3.

## **ARTICLE 24**

### **Special Election Procedures**

#### **1-24-1. Special election procedures; application.**

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 [1-24-1 to 1-24-4 NMSA 1978] of this act shall apply.

**History:** Laws 1989, ch. 295, § 1.

#### **ANNOTATIONS**

**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.

#### **1-24-2. Special election procedures; proclamation; publication.**

A. Whenever a local government special election is to be called or is required by law, the governing body shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the county clerk. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the purpose for which the special election is called;
- (3) if officers are to be elected or positions on the governing body are to be filled, the date on which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the precincts in each county in which the election is to be held and the location of each polling place in the precinct;
- (6) the hours that each polling place will be open; and
- (7) the date and time of closing the registration books by the county clerk as required by law.

B. After filing with the county clerk the proclamation issued pursuant to Subsection A of this section, and not less than fifty-six days before the date of the election, the governing body shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation within the boundaries of the local government or special district. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

C. Whenever a statewide special election is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election. 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. The proclamation shall forthwith be filed with the secretary of state. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the purpose for which the special election is called;
- (3) if a vacancy in the office of United States representative is to be filled, the date on which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question; and

(5) the date and time of closing the registration books by the county clerk as required by law.

D. After the proclamation issued pursuant to Subsection C of this section is filed with the secretary of state, the secretary of state shall within five days certify the proclamation to each county clerk in the state. Not less than fifty-six days before the date of the election, the county clerk shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation, 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. For an election called pursuant to Subsection F of Section 1-15-18.1 NMSA 1978, the proclamation shall be published consistent with this subsection not less than thirty-six days before the date of the election. 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.

## ANNOTATIONS

**Cross references.** — For the federal Voting Rights Act of 1965, see 42 U.S.C. § 1973 et seq.

**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.**

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.

**History:** Laws 1989, ch. 295, § 3.

### **1-24-4. Special election procedures; records.**

The returns and certificates of the results of special elections are public documents, subject to inspection 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 file as a permanent record in the records center.

**History:** Laws 1989, ch. 295, § 4.