

# 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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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.

**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).

**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).

**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 [this chapter] 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 [this chapter].

**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).

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

As used in the Election Code [this chapter], "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).

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

As used in the Election Code [this chapter], "qualified elector" means any person 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.

#### **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.

**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 [this chapter], "voter" means any qualified elector who is registered under the provisions of the Election Code.

**History:** 1953 Comp., § 3-1-5, enacted by Laws 1969, ch. 240, § 5.

#### **ANNOTATIONS**

**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).

## **1-1-6. Recheck and recount.**

As used in the Election Code [this chapter]:

A. "recheck" pertains to voting machines and means a verification procedure where the center counter compartment door of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns; and

B. "recount" pertains to emergency paper ballots and absentee ballots and means a retabulation and retallying of individual ballots.

**History:** 1953 Comp., § 3-1-5.1, enacted by Laws 1977, ch. 222, § 1.

### **ANNOTATIONS**

**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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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.

**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).

**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. 6208.

**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. 6445.

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).

**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).

**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).

**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).

**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).

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

**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.

**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.

**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.

**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).

**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.

**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. 6425.

**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. 5841.

**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.

**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).

**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 [this chapter] 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, and both approved April 8, 1993, which substituted "certificate" for "affidavit" near the end of the section. The section is 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 [this chapter], "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, and both approved April 8, 1993, which substituted "certificates" for "affidavits" following "original" and "copies of certificates" for "duplicate affidavits". The section is set out as amended by Laws 1993, ch. 316, § 2. See 12-1-8 NMSA 1978.

**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).

**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).

**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. Major political party; minor political party.**

As used in the Election Code [this chapter]:

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, none of whose candidates received five percent or more 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.

**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.

## ANNOTATIONS

**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.

### **1-1-10. Qualified political party.**

As used in the Election Code [this chapter], "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 [this chapter], "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. 6067 (opinion rendered under former law).

### **1-1-12. Consolidated precinct.**

As used in the Election Code [this chapter], "consolidated precinct" means the combination of two or more precincts pursuant to the provisions of Sections 1-3-4 and 1-6-21 NMSA 1978.

**History:** 1953 Comp., § 3-1-11, enacted by Laws 1969, ch. 240, § 11; 1975, ch. 255, § 4.

### **ANNOTATIONS**

**Cross references.** - For consolidation of precincts, see 1-3-4, 1-3-5 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. 6067 (opinion rendered under former law).

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

As used in the Election Code [this chapter], "precinct board" means the appointed election officials serving a single precinct or a consolidated precinct.

**History:** 1953 Comp., § 3-1-12, enacted by Laws 1969, ch. 240, § 12.

### **ANNOTATIONS**

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

**"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.**

As used in the Election Code [this chapter], "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 which 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.

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

### **1-1-15. Posting.**

As used in the Election Code [this chapter], "posting" means posting for not less than seven days prior to an election or to an action to be taken, in at least one conspicuous place in each precinct in the county.

**History:** 1953 Comp., § 3-1-14, enacted by Laws 1969, ch. 240, § 15.

## **ANNOTATIONS**

**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 [this chapter], "registration officer" means a county clerk or his authorized deputy or a member of the board of registration.

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

## **ANNOTATIONS**

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

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

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

As used in the Election Code [this chapter], "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 oath before registration officers, see 1-4-5 NMSA 1978.

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 14-12-1, 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 veterans' service commission officials, see 28-13-8 NMSA 1978.

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

For oath administered by public service commissioners, see 62-10-9 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 [this chapter], "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 [this chapter] 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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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).

**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 [this chapter] 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 [this chapter] 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.

## **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 124, § 19 makes the act effective January 1, 1996.



## ARTICLE 2

# ELECTION OFFICERS AND BOARDS

### 1-2-1. Secretary of state; chief election officer; rules and regulations; 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 [this chapter];

(2) subject to the State Rules Act [Chapter 14, Article 4 NMSA 1978], make rules and regulations 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 and regulations; 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.

### 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's office, see 8-4-5 NMSA 1978.

**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 [this chapter].

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;

B. administer the Election Code [this chapter] in its statewide application especially as it relates to federal and state elective offices;

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

D. 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;

E. report possible violations of the Election Code of which he has knowledge to the district attorney or the attorney general for prosecution;

F. cause to be published in pamphlet 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;

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

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

I. assist the county clerks in the education and training of registration officers and precinct boards.

**History:** 1953 Comp., § 3-2-2, enacted by Laws 1969, ch. 240, § 23; 1975, ch. 255, § 8; 1995, ch. 198, § 2.

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

### **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, 1-2-24 NMSA 1978.

For secretary prescribing form of affidavit of registration under Automated 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, 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 enact identical new sections of law. Both have been compiled as 1-2-3.1 NMSA 1978.

#### **1-2-4. Secretary of state; instructions to precinct boards.**

A. The secretary of state shall provide instructions for the precinct board, which shall include a brief nontechnical explanation of their duties as required by the Election Code [this chapter].

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.

#### **ANNOTATIONS**

**Cross references.** - For the secretary 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.

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

In carrying out his duties under the Election Code [this chapter], 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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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. V, § 7. *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).

**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.**

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

- (1) be a resident of the representative district and county in which the precinct where he is a voter is located;
- (2) be able to read and write;
- (3) have the necessary capacity to carry out his functions with acceptable skill and dispatch; and
- (4) execute the precinct board member's oath of office.

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

- (1) who is a candidate for any federal, state, district or county office;
- (2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election; or
- (3) who is a sheriff, deputy sheriff, marshal, deputy marshal, state or municipal policeman.

**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.

### **ANNOTATIONS**

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

**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. See *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.

**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).

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

### 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 chairmen in the order stated thereon;

B. from the standby list; and

C. 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.

### **ANNOTATIONS**

**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 in any precinct 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.

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

A. When absentee ballots are counted, the precinct board shall consist of:

(1) a presiding judge;

(2) one election judge from each of the major political parties;

(3) one clerk from each of the major political parties; and

(4) if a major party has no registered, qualified elector who is able to fill the position as election judge or election clerk, a registered, qualified elector from another major party, chosen by the county clerk to fill the vacant position.

B. When one voting machine is to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) one election clerk who shall be of a different political party than the presiding judge.

C. When two voting machines are to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) two election clerks who shall be of different political parties.

D. When three voting machines are used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) three election clerks, not more than two of whom shall belong to the same political party.

E. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as he deems necessary; provided, however, that such appointments shall be made in the manner that provides for representation from all major political parties.

F. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place.

**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.

## 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 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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 4 and Laws 1993, ch. 316, § 4, both effective June 18, 1993, and both approved April 8, 1993, which made a minor stylistic change in Subsection E and substituted "certificate" for "affidavit" in Subsection F. The section is set out as amended by Laws 1993, ch. 316, § 4. See 12-1-8 NMSA 1978.

**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).

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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. 4442.

**1-2-13. Primary election; appointment of temporary additional clerks.**

Not less than twenty-eight days prior to the primary election, the county clerk shall appoint a temporary additional election clerk for each precinct in the county for any political party participating in that election when such temporary additional election clerk has been selected and his appointment requested in writing, signed by any group or groups of six candidates for such party's nomination for county offices in the county. No single candidate in such election shall join in more than one request for a temporary additional election clerk. Temporary additional election clerks shall serve without compensation and shall serve only for the primary election for which appointed. Temporary additional election clerks shall attend the county clerk's school for that primary election, execute a precinct board member's oath and otherwise meet the qualifications for a precinct board member.

**History:** 1953 Comp., § 3-2-12, enacted by Laws 1969, ch. 240, § 33.

### **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 precinct, post the list in a conspicuous and accessible place in his office and keep it posted for five days and send a copy of the list by mail to the county chairman of each major political party and to the secretary of state; and

(2) by mail, notify each person appointed, request his written acceptance and keep a record of all notifications and acceptances. The notice shall be accompanied by a copy of the instructions to the precinct board.

B. If any person appointed to a precinct board fails to accept the appointment within two weeks after the notice was sent, 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.

### **ANNOTATIONS**

**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 repeals former 1-2-15 NMSA 1978, as enacted by Laws 1969, ch. 240, § 35, relating to precinct board, vacancy on election day, and enacts the above section, effective April 2, 1991. For provisions of former section, see 1985 Replacement Pamphlet.

### **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 one hundred fifty dollars (\$150) for an election day.

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

**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.

## ANNOTATIONS

**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".

**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 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.

**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 secretary of state shall supervise and the county clerk 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 in any county with a population of one hundred thousand or more according to the most recent federal decennial census.

B. 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 the elections in any county having a population of less than one hundred thousand according to the most recent federal decennial census.

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

- (1) one school not less than three days before the primary election;
- (2) one school not less than three days before the general election; and
- (3) one school not less than three days before any other statewide election.

D. All major details of the conduct of elections shall be covered by the county clerk or his authorized representative at such school, with special emphasis being given to recent changes in the Election Code [this chapter].

E. 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 by mail at least seven days prior to commencement of the school.

F. No person shall serve as a judge or member of a precinct board in any election who has not attended at least one such school of instruction in the calendar year of the election at which he 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.

## ANNOTATIONS

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

**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 [this chapter], "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**

**Voting Rights Act of 1965.** - The 1975 amendments to the federal Voting Rights Act of 1965 appear as 42 U.S.C. §§ 1973a to 1973d, 1973h, 1973i, 1973k, 1973l, 1973aa, 1973aa-1a, 1973aa-2 to 1973aa-5, 1973bb, 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.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] each way over the usually traveled route. 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.

#### **ANNOTATIONS**

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

**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 chairman of each political party represented on the ballot may appoint in writing one challenger and one alternate challenger for each precinct.

B. If any county chairman fails to make such appointments the precinct chairman of the political party may appoint in writing one challenger and one alternate challenger for the precinct.

C. If any precinct chairman 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 and one alternate challenger in writing.

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

#### **ANNOTATIONS**

**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; qualifications; restrictions.**

Challengers and alternate challengers shall be voters of a precinct located in that county to which they are appointed. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person who is a spouse or child of a candidate being voted on at the election shall serve as a challenger or alternate challenger.

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

#### **ANNOTATIONS**

**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 or alternate challenger, upon presentation of his written appointment to the precinct board, shall be permitted to be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

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

(1) inspect the registration book or precinct voter list for the purpose of determining whether he desires to interpose a challenge;

(2) inspect the pollbooks, registration book or signature rosters to determine whether entries are being made in accordance with the Election Code [this chapter];

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

(4) 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.

## ANNOTATIONS

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

**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; prohibited activities.**

A. Challengers and alternate challengers shall not be permitted to perform any duty of a precinct board member. Challengers and alternate challengers shall not handle the

ballots, pollbooks, signature rosters or voting machines or take any part in the tallying or counting of the ballots.

B. Only one challenger or alternate challenger for each political party in each precinct shall be permitted at one time in the room in which the voting is being conducted.

C. Challengers shall not interfere with the orderly conduct of the election.

**History:** 1953 Comp., § 3-2-23, enacted by Laws 1969, ch. 240, § 44; 1975, ch. 255, § 24.

## **ANNOTATIONS**

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

### **1-2-26. Challengers; penalty.**

The act of denying a challenger or alternate challenger, who has presented his written appointment to the precinct board, the right to be present at the polling place, or denying him the right to challenge voters and inspect the registration books, signature rosters or pollbooks, or denying him the right to witness the counting and tallying of ballots is a petty misdemeanor.

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

### **1-2-27. Watchers; appointment.**

A. The county chairman of each political party represented on the ballot may appoint in writing two watchers for each precinct. If any county chairman fails to make the appointments, the precinct chairman of the political party may appoint in writing two watchers for the precinct. If any precinct chairman fails to make the 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 in writing two watchers.

B. In a primary election any group of six candidates for county office for each political party participating in the election may appoint in writing an additional watcher for each precinct. No candidate, however, shall join in more than one request for an additional watcher.

C. In a primary election any group of three candidates seeking nomination for statewide or district office may appoint in writing one watcher for each of those precincts as they may desire. No candidate, however, shall join in more than one request for an additional watcher at any precinct.

**History:** 1953 Comp., § 3-2-25, enacted by Laws 1969, ch. 240, § 46; 1975, ch. 255, § 26.

## ANNOTATIONS

**Compiler's notes.** - The following notes are from opinions rendered under former Election Code provisions.

**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. 4609.

**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. 5290.

**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. Watchers; qualifications; restrictions.**

Watchers shall have the same qualifications and restrictions as required by the Election Code [this chapter] for challengers.

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

## ANNOTATIONS

**Cross references.** - For qualifications for challengers, see 1-2-22 NMSA 1978.

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

29 C.J.S. Elections § 58.

### **1-2-29. Watchers; permissible and unpermissible activities.**

A. Upon presentation of his written appointment to the precinct board, a watcher may:

(1) be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close;

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

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

(4) 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 is subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code.

**History:** 1953 Comp., § 3-2-27, enacted by Laws 1969, ch. 240, § 48.

### **ANNOTATIONS**

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

**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; penalty.**

The act of denying a watcher, who has presented his written appointment to the precinct board, the right to be present at the polling place, or denying him the right to witness the counting and tallying of the ballots, is a petty misdemeanor.

**History:** 1953 Comp., § 3-2-28, enacted by Laws 1969, ch. 240, § 49.

## **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, 1-6-20, 1-6-22, 1-6-24, and 1-6-25 NMSA 1978.

For precinct boundaries, see 4-38-20 to 4-38-23 NMSA 1978.

**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.

**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.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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; and

(4) divide any precincts as necessary to meet legal and constitutional requirements for redistricting.

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 [1-3-10 to 1-3-14 NMSA 1978]. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of that 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.

## 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 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.

**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.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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.



**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. 5489.

**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.

**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 in person in 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 in person in both precincts in the last preceding general election exceeds six 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.

#### **ANNOTATIONS**

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

### **1-3-3.1. Suspension of certain requirements; precinct boundary freeze; exceptions. [Repealed.]**

#### **ANNOTATIONS**

**Repeals.** - Laws 2000, ch. 81, § 2 repeals 1-3-3.1, 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 2001 Cumulative Supplement.

### **1-3-4. Consolidation of precincts; notice.**

A. Precincts may be consolidated by the appropriate governing authority for the following elections:

- (1) statewide special elections;
- (2) countywide special elections;
- (3) elections to fill vacancies in the office of representative in congress;
- (4) municipal candidate and bond elections unless otherwise prohibited; and
- (5) school district candidate and bond elections unless otherwise prohibited.

B. When precincts are consolidated as provided in this section, the notice of election, in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place.

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

#### **ANNOTATIONS**

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

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

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

### **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**

**Compiler's notes.** - Several of the following notes are taken from opinions rendered under former Election Code provisions.

**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. 4841.

**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.

**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).

### **1-3-7. Polling places.**

A. No less than one polling place shall be provided for each precinct.

B. The board of county commissioners shall designate as the polling place, or places as the case may be, in each 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 [this chapter].

D. If no public building or public school building is available in the precinct and if 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. Provided, 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, however, 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 (Public Law 98-435).

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.

### **ANNOTATIONS**

**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.

**Compiler's notes.** - The federal Voting Accessibility for the Elderly and Handicapped Act, referred to in Subsection E, appears as 42 U.S.C. § 1973ee et seq.

**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 [this chapter].

**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 numbered or named street or road or with a visible terrain feature 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 federal PL 94-171 2000 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 furnish to each county clerk standard base maps of the county. The standard base map for 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 state highway and transportation department;

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

(4) all major railroad lines; and

(5) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines 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 urban precinct boundaries to coincide with numbered or named street boundaries;

(2) adjust all nonurban precinct boundaries to coincide with suitable visible terrain features shown on the standard base map; provided that in order to make an adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that the precincts shall be composed of contiguous and compact areas, and state, county and municipal boundary lines may serve as precinct boundaries; and

(3) 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 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 2001 redistricting. For the 2002 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

**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.

## 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. For provisions of former section, relating to redrawing precinct boundaries, see 1983 Cumulative Supplement to this pamphlet.

**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.

**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 1997 amendment**, 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. Laws 1997, ch. 85 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 where 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, 2002, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of legislative reapportionment, 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 2002 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.

## ANNOTATIONS

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 40, § 1, effective March 29, 1991, and Laws 1991, ch. 237, § 1, effective April 4, 1991, which 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. The section is set out as amended by Laws 1991, ch. 237, § 1. See 12-1-8 NMSA 1978.

**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 1997 amendment,** in the second sentence of Subsection A, inserted "with the precinct boundary criteria set forth in Subsection A of Section 1-13-12 NMSA 1978", deleted "of noncompliance" following "statement", and substituted "does not comply" for "is in default"; and, in Subsection B, substituted "2002" for "1992" in two places. Laws 1997, ch. 85 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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, repeals 1-3-15 and 1-3-16 NMSA 1978, as enacted by Laws 1983, ch. 223, §§ 6, 7, relating to implementation of and appropriations for the Precinct Boundary Adjustment Act, effective March 28, 1984. For provisions of former sections, see 1983 Cumulative Supplement.

Laws 1991 (1st S.S.), ch. 6, § 10 repeals 1-3-17 NMSA 1978, as amended by Laws 1987, ch. 327, § 1, relating to use of adjusted precinct boundaries for reapportionment purposes, effective October 4, 1991. For former provisions, see 1991 Replacement Pamphlet.

### **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 state bureau of elections.

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 his 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 will be furnished and have available equipment necessary to assist voters in reading the ballot.

**History:** Laws 1989, ch. 199, § 1.

## **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 [this chapter]. 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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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).

**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.

**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).

**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).

**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).

**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).

**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).

**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).

**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.

**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. 5948.

**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.

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

**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 person who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code [this chapter] to register and become a voter, provided, however, he shall not register in New Mexico without canceling his registration in the state of previous residence if such there be.

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

### **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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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. 5948.

**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).

**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 [this chapter].

**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, and both approved April 8, 1993, which substituted "certificate" for "affidavit" and "canceled" for "cancelled". This section is 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 [this chapter] 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.**

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

B. The registration officer shall fill out each of the blanks on the original and the voter's copy of the certificate of registration by typing or printing in ink. Carbon paper may be used between the original and the voter's copy.

C. The qualified elector shall subscribe a certificate of registration.

(1) A person shall sign his original certificate of registration using his given name, middle name or initial and last name.

(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, and the name of the qualified elector so registering shall be subscribed by the making of his mark.

D. When properly executed by the registration officer, the original and the voter's copy of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration 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 his signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector.

**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.

## **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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 6 and Laws 1993, ch. 316, § 6, both effective June 18, 1993, and both approved April 8, 1993, which 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". This section is set out as amended by Laws 1993, ch. 316, § 6. See 12-1-8 NMSA 1978.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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. 6342.

**Affidavits of registration may be filled out before any person authorized to administer oaths.** 1959-60 Op. Att'y Gen. No. 59-169.

**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.

**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.

**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.

**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.

**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.

**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.

**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 or in the office of the county clerk.
- B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person, by telephone or by mail for oneself or for others.
- 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 [40-13-1 to 40-13-7 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 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 his 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 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.

**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.

## ANNOTATIONS

**The 1997 amendment** made a minor stylistic change in Subsection A, and added Subsection D and redesignated the remaining subsections accordingly. Laws 1997, ch. 209 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Duplicate Law.** - Laws 1993, ch. 314, § 7 and Laws 1993, ch. 316, § 7 enact identical new sections of law. Both have been compiled as 1-4-5.1 NMSA 1978.

## **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.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1995, ch. 198, § 18 makes the act effective immediately. Approved April 6, 1995.

## **1-4-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 249, § 52 repeals 1-4-6 NMSA 1978, as enacted by Laws 1969, ch. 240, § 64, relating to receipt for affidavit of registration, effective June 19, 1987. For provisions of former section, see 1985 Replacement Pamphlet.

## **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 [this chapter].

**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, and both approved April 8, 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 is 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.**

A. The county clerk shall receive certificates of registration at all times during normal working hours, except that he 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.

B. Registration shall be reopened on the Monday following the election.

C. 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.

D. 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 identification card shall be mailed to the registrant at the address shown on the certificate of registration.

E. 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.

F. The county clerk shall accept for filing any certificate of registration that is hand delivered before 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any mailed certificate of registration postmarked not less than twenty-eight days prior to any election referred to in this section. The county clerk shall accept for filing any certificate of registration accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978 not later than twenty-eight days prior to any 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.

## ANNOTATIONS

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

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 9 and Laws 1993, ch. 316, § 9, both effective June 18, 1993, and both approved April 8, 1993, which, 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". The section is set out as amended by Laws 1993, ch. 316, § 9. See 12-1-8 NMSA 1978.

**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".

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

**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 42) 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).

**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 forty-second) 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).

**Affidavits received while books closed to be filed on Monday following election.** - Subsection B 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.

**Close of registration for municipal elections.** - At municipal elections, electors may continue to register at all times with the county clerk and be included in the registration lists delivered by the county clerk to the city clerk up to three days before the municipal elections. They may continue to be registered up until election day, except that their names will not be in the registration lists, and those electors who register after delivery of registration lists to the city clerk may vote only as shown by Laws 1939, ch. 153, § 5 (now repealed). 1939-40 Op. Att'y Gen. 125 (opinion rendered under former law).

**Close of registration transfer before municipal elections.** - Original registration closes 30 (now 42) 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. 5128 (opinion rendered under former law).

**Procedure for accepting affidavits when election within 42 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 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 day prior to the first election and the 42nd day prior to the second election. 1976 Op. Att'y Gen. No. 76-26.

**Procedure when elections overlap.** - Even though registration is closed 30 (now 42) 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 42) 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 42) days prior to the primary election. 1963-64 Op. Att'y Gen. No. 63-155 (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 day before a primary election. 1943-44 Op. Att'y Gen. No. 4482 (opinion rendered under former law).

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

29 C.J.S. Elections § 39.

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

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

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

### **1-4-10. 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.

## **ANNOTATIONS**

**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.

### **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, his name and the date the certificate was accepted for filing in the county registration records. A voter identification card shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his 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. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must take to bring his registration up to date.

**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.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 10 and Laws 1993, ch. 316, § 10, both effective June 18, 1993, and both approved April 8, 1993, which, 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". This section is set out as amended by Laws 1993, ch. 316, § 10. See 12-1-8 NMSA 1978.

**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.

### **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 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.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 11 and Laws 1993, ch. 316, § 11, both effective June 18, 1993, and both approved April 8, 1993, which substituted "Certificates" for "Affidavits", "certificate" for "affidavit", and "certificates" for "affidavits" throughout the section and made several minor stylistic changes. The section is set out as amended by Laws 1993, ch. 316, § 11. See 12-1-8 NMSA 1978.

**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".

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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.

**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. 5505.

**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 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.

**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.

**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.

**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.

**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.

**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.

### **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, and both approved April 8, 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 is set out as amended by Laws 1993, ch. 316, § 12. See 12-1-8 NMSA 1978.

#### **1-4-14. Certificate of registration; voter identification card; replacement of lost copy.**

If any certificate of registration or voter identification card is lost, the county clerk upon application of the voter shall make a replacement voter identification card from the certificates in his office. The application for replacement shall be retained for six years by the county clerk in a file established for that purpose. The voter identification card issued pursuant to the application shall be stamped "Replacement Copy".

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

#### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 13 and Laws 1993, ch. 316, § 13, both effective June 18, 1993, and both approved April 8, 1993, which substituted "Certificate" for "Affidavit" in the section heading and "certificate" for "affidavit" throughout the section. The section is set out as amended by Laws 1993, ch. 316, § 13. See 12-1-8 NMSA 1978.

**The 1995 amendment,** effective April 6, 1995, inserted in the first sentence "or voter identification card" following "registration" and substituted "voter identification card" for "copy thereof", deleted "of a lost copy of the certificate" following "replacement" in the second sentence, and substituted "voter identification card" for "certificate" in the third sentence.

**Cancellation of registration due to mistake where copy lost.** - Where a registration affidavit has to be canceled due to mistake, and the county clerk has the original and duplicate copies of it, but the registrant has lost the triplicate copy, the clerk may file the affidavit in the canceled file and allow the person to re-register, since the triplicate copy is void due to said cancellation. 1939-40 Op. Att'y Gen. 117 (opinion rendered under former law).

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

A. A voter may change his designated party affiliation by executing a certificate of registration for 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 make an original designation of party affiliation by executing a certificate of registration for designation of 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.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 14 and Laws 1993, ch. 316, § 14, both effective June 18, 1993, and both approved April 8, 1993, which 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. The section is set out as amended by Laws 1993, ch. 316, § 14. See 12-1-8 NMSA 1978.

**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.

**Compiler's notes.** - The following notes are from opinions rendered under former Election Code provisions.

**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.

**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.

**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, and both approved April 8, 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 is set out as amended by Laws 1993, ch. 316, § 15. See 12-1-8 NMSA 1978.

**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. 4482 (opinion rendered under former law).

**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).

### **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

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

**1993 amendments.** - Laws 1993, ch. 10, § 1, enacted an amendment to this section, effective June 18, 1993, approved March 12, 1993, which added language at the end of Subsection A, and inserted "or notifications of" in Subsection B and "or notification of" in Subsection C. Identical amendments to this section were enacted by Laws 1993, ch. 314, § 16, and Laws 1993, ch. 316, § 16, both effective June 18, 1993, and both approved April 8, 1993, which substituted "complete a certificate of registration" for "apply to a registration officer" in Subsection A. The section is set out as amended by Laws 1993, ch. 316, § 16. See 12-1-8 NMSA 1978.

**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).

**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. 4936 (opinion rendered under former law).

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

29 C.J.S. Elections § 52.

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

When a voter changes his registered residence address from one county in this state to another county in this state, he shall complete a certificate of registration and file it with the appropriate county clerk; provided, he shall not register in the county of new residence without first canceling his registration in the county of previous residence.

**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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 17 and Laws 1993, ch. 316, § 17, both effective June 18, 1993, and both approved April 8, 1993, which 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". The section is set out as amended by Laws 1993, ch. 316, § 17. See 12-1-8 NMSA 1978.

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

29 C.J.S. Elections § 52.

### **1-4-19. 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, and both approved April 8, 1993, which deleted "Affidavit of" preceding "Registration" in the section heading. The section is 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 repeals 1-4-20 NMSA 1978, as amended by Laws 1975, ch. 255, § 42, relating to the affidavit of registration form, effective June 19, 1987. For provisions of the former section see 1985 Replacement Pamphlet.



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

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

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

**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 forty-two days prior to any election held pursuant to the Election Code [this chapter], the secretary of state, the county chairman of any major political party or any twenty petitioners who are voters of the county may file and present to the district court a verified petition alleging either on personal knowledge or 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 such petition, the court shall by order fix a day for hearing thereon, which date shall be not less than five days nor more than ten days after such order. The court shall direct the county clerk to forthwith notify such persons named in the petition whose registration is sought to be canceled of the date and

purpose of the hearing, and that each such person should be present at the hearing if he desires to oppose such cancellation.

C. Any county chairman or any group of twenty petitioners who, without reasonable cause, shall file a petition seeking to purge a voter are liable for the costs of such proceeding.

D. 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 such registrations.

**History:** 1953 Comp., § 3-4-20, enacted by Laws 1969, ch. 240, § 78; 1975, ch. 255, § 43; 1995, ch. 124, § 4.

### ANNOTATIONS

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

**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) 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). See Rule 1-007B, C.

**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. Review of registration; board of registration; inactive voter list creation.**

Beginning on the third Monday of March of each odd-numbered year, the board of registration shall review all certificates of registration for failure of the voter to vote and, based on that review, shall establish a list of inactive voters. Voters who fail to vote in at

least one statewide or local election in a two-year period shall be placed on an inactive voter list.

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

### ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 19 and Laws 1993, ch. 316, § 19, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificates" for "affidavits". The section is set out as amended by Laws 1993, ch. 316, § 19. See 12-1-8 NMSA 1978.

**The 1995 amendment,** effective April 6, 1995, substituted "review" for "cancellation" and "inactive voter list creation" for "grounds when" in the section heading, substituted "review all" for "cancel, or if applicable, suspend and cancel", deleted "certain" preceding "failure", and added "and, based on that review, shall establish a list of inactive voters. Voters who fail to vote in at least one statewide or local election in a two-year period shall be placed on an inactive voter list."

### **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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 20 and Laws 1993, ch. 316, § 20, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificates" for "affidavits". The section is set out as amended by Laws 1993, ch. 316, § 20. See 12-1-8 NMSA 1978.

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

**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. 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, 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.

**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.

### ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 21 and Laws 1993, ch. 316, § 21, both effective June 18, 1993, and both approved April 8, 1993, which deleted "affidavits of" preceding the first occurrence of "registration" in Subsection A. The section is set out as amended by Laws 1993, ch. 316, § 21. See 12-1-8 NMSA 1978.

**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.

## **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, and both approved April 8, 1993, which deleted "affidavits of" preceding "registration" near the beginning of Subsection A. The section is 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 repeals 1-4-27 NMSA 1978, as amended by Laws 1993, ch. 316, § 23, relating to the cancellation of a convicted felon's voter's registration, effective July 1, 2001. For provisions of former section, see 1995 Replacement Pamphlet.

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

A. When a voter has been convicted of a felony, the clerk of the district court where the conviction occurred shall file a certificate of felony conviction with the county clerk of the county where the convicted felon is registered to vote.

B. For purposes of cancellation of registration, verification of a felony conviction may be obtained by comparing the voter's registration record with the certificate of felony conviction filed by the clerk of the district court.

C. The certificate of felony conviction shall include the voter's:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birthplace;

- (6) birth date;
- (7) social security number, if any;
- (8) date of conviction; and
- (9) address.

D. When a voter convicted of a felony, for which a sentence of imprisonment is authorized but deferred or suspended by order of the court, has completed the conditions of the court order, the clerk of the court shall notify the county clerk of the county where the convicted felon was registered to vote that the person is eligible for registration.

E. When a voter convicted of a felony is unconditionally discharged from a correctional facility under the jurisdiction of the corrections department, or is conditionally discharged from a facility under the jurisdiction of the corrections department and has completed all conditions of probation or parole, the corrections department shall notify the county clerk of the county where the felon was registered to vote that the person is eligible for registration.

F. When a voter convicted of a federal offense constituting a felony is unconditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency, or is conditionally discharged from a correctional facility under the jurisdiction of a federal corrections agency, and has completed all conditions of probation or parole, the federal agency having jurisdiction of that person shall notify the county clerk of the county where the felon was registered to vote that the person is eligible for registration.

**History:** Laws 2001, ch. 46, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 2001, ch. 46, § 6 make the act effective on July 1, 2001.

**Applicability.** - Laws 2001, ch. 46, § 5 makes the provisions of this section apply to a person convicted of a felony offense prior to, on, or after July 1, 2001.

### **1-4-28. Cancellation of registration; certain failure to vote; suspension; notice.**

A. The failure of a voter to vote in at least one statewide or local election in a four-year period after being placed on an inactive voter list shall be grounds for cancellation of registration by the board of registration.



B. The secretary of state shall prescribe procedures for ascertaining whether a voter has voted at least once in the last four-year period, establishing an inactive voter list and providing notice of inactive status to voters on the inactive voter list.

C. After a determination that a voter has apparently not voted, the board of registration shall suspend the certificate of registration for sixty days.

D. The county clerk, upon direction of the board of registration, shall mail a notice to the voter at his residence address shown on the certificate of registration.

E. The certificate of registration shall be canceled if, after being placed on the inactive voter list, the voter fails to vote at least once in any statewide or local election in the ensuing four-year period and the voter fails to respond to notification of intended cancellation.

**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.

## ANNOTATIONS

**Cross references.** - For determination of voter's death, see 1-4-25 NMSA 1978.

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

For determination of voter's felony conviction, see 1-4-27 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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 24 and Laws 1993, ch. 316, § 24, both effective June 18, 1993, and both approved April 8, 1993, which 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. The section is set out as amended by Laws 1993, ch. 316, § 24. See 12-1-8 NMSA 1978.

**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.

**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. 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, and both approved April 8, 1993, which substituted "certificates" for "affidavits" throughout

the section. The section is 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 his registered residence address to another county within the state; and

(2) when the voter moves to another state.

B. An application by a voter to cancel his 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. Upon receipt of the written request for cancellation of registration, the county clerk shall cancel the voter's registration and shall forthwith mail to such person a notice of such cancellation and the date of cancellation.

D. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the written request therefor and when such 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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 26 and Laws 1993, ch. 316, § 26, both effective June 18, 1993, and

both approved April 8, 1993, which 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". The section is set out as amended by Laws 1993, ch. 316, § 26. See 12-1-8 NMSA 1978.

### **1-4-31. Cancellation of registration; county clerk.**

The county clerk shall cancel registration:

- A. only upon written application of the voter for reasons set out by law;
- B. only in compliance with the instructions of the board of registration pursuant to the provisions of Section 1-4-28 NMSA 1978;
- C. only in compliance with an order of the district court; or
- D. only in compliance with the provisions of Section 1-4-24 NMSA 1978.

**History:** 1953 Comp., § 3-4-29, enacted by Laws 1969, ch. 240, § 87; 1975, ch. 255, § 49; 1979, ch. 24, § 4; 1993, ch. 314, § 27; 1993, ch. 316, § 27.

### **ANNOTATIONS**

**Cross references.** - For failure to cancel registration, see 1-4-29 NMSA 1978.

For duty of county clerk to retain records of cancelled registrations, see 1-4-32 NMSA 1978.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 27 and Laws 1993, ch. 316, § 27, both effective June 18, 1993, and both approved April 8, 1993, which deleted "affidavits of" preceding "registration" in the introductory language. The section is set out as amended by Laws 1993, ch. 316, § 27. See 12-1-8 NMSA 1978.

### **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 is 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 [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried public officers. Such compensation shall be included as an item in the regular county budget.

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

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 29 C.J.S. Elections § 44.

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

A. 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. 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 repeals 1-4-39 through 1-4-45 NMSA 1978, as amended by Laws 1975, ch. 255, §§ 58 and 60, Laws 1979 ch. 24, §§ 8 and 9, and Laws 1993, ch. 316, §§ 29, 30 and 31, relating to deputy registration officers, effective April 6, 1995. For provisions of former sections, see 1991 Replacement Pamphlet and 1994 Cumulative Supplement.

**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 is 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 applying for a driver's license, to renew a driver's license or for an identification card shall, if otherwise 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 of the taxation and revenue department 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". Personnel in each office shall advise any applicant for licensure, 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.

D. No motor vehicle division employee or contractor may intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. No motor vehicle division employee or contractor may 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 appropriate registration officer within ten calendar days.

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

### **ANNOTATIONS**

**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] regulations for the administration of a state-agency-based voter registration program. The regulations 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 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. Any records maintained by the 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. No state agency employee or agency contractor who participates in the voter registration process may intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. No state agency employee or agency contractor who participates in the voter registration process may 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.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1995, ch. 198, § 18 makes the act effective immediately. Approved April 6, 1995.

**National Voter Registration Act.** - The federal National Voter Registration Act of 1993, referred to in Subsection A, is codified as 42 U.S.C. § 1973gg et seq.

# **ARTICLE 5**

## **AUTOMATED VOTER RECORDS SYSTEM**

### **1-5-1. Short title.**

Sections 1-5-1 through 1-5-29 NMSA 1978 may be cited as the "Automated Voter Records System Act".

**History:** 1953 Comp., § 3-5-1, enacted by Laws 1969, ch. 240, § 103; 1975, ch. 255, § 62.

### **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 precinct thereof;
- C. "voter list" means any prepared list of voters;
- D. "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;
- E. "active data processing media" means magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by computer for the eventual preparation of voter lists;
- F. "intermediate records" means records on active data processing media;
- G. "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 active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978];
- H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;
- I. "mailing labels" means prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means prepared lists of selected voters arranged in the order in which requested;

K. "statistical data" means information derived from the voter file;

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

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978];

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

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

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

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results;

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file;

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

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

**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.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 32 and Laws 1993, ch. 316, § 32, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavits" in Subsection B and "certificate" for "affidavit" in Subsection G. Laws 1993, ch. 363, § 1 enacted an amendment to this section, effective June 18, 1993, approved on April 8, 1993, which 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. The section is set out as amended by Laws 1993, ch. 363, § 1. See 12-1-8 NMSA 1978.

**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 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.

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

A. Effective January 1, 1984, the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] is mandatory and supplemental to the provisions of the Election Code [this chapter]. The provisions of that act shall be implemented by order of the board of county commissioners of the county in all precincts of a county.

B. The secretary of state shall maintain a current registration list of state voters based on county voter lists and shall prescribe any rules, forms and instructions necessary for the orderly transition to and the efficient implementation of procedures required by the Automated Voter Records System Act. 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 magnetic 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 Automated Voter Records System Act, but the procedures of that act shall be used in lieu of others prescribed in the Election Code.

**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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 33 and Laws 1993, ch. 316, § 33, both effective June 18, 1993, and both approved April 8, 1993, which deleted former Subsection D, relating to the destruction of duplicate affidavits of registration by the county clerk. The section is set out as amended by Laws 1993, ch. 316, § 33. See 12-1-8 NMSA 1978.

**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 [this chapter].

**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**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 34 and Laws 1993, ch. 316, § 34, both effective June 18, 1993, and both approved April 8, 1993, which deleted "affidavit of" preceding "registration until" in Subsection D and substituted "certificate" for "affidavit" throughout the section. The section is set out as amended by Laws 1993, ch. 316, § 34. See 12-1-8 NMSA 1978.

**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.

### **1-5-6. Voter lists; signature roster preparation.**

The county clerk shall provide for preparation of voter lists and signature rosters for any precincts. The 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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 35 and Laws 1993, ch. 316, § 35, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificates" for "affidavits" in the second sentence. The section is set out as amended by Laws 1993, ch. 316, § 35. See 12-1-8 NMSA 1978.

**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.

**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. Voter lists; signature rosters; contents.**

A. The voter lists and signature rosters for any precinct shall contain for each voter, as shown in the county register:

(1) his name;

(2) gender;

- (3) place of residence;
- (4) social security number;
- (5) year of birth;
- (6) party affiliation, if any; and
- (7) precinct of residence.

B. In addition, the names on each voter list and signature roster shall be numbered consecutively beginning with the number "1".

C. On each page of each voter list and on each signature roster there shall be printed the page number and the date and name of the election for which they are to be used.

D. For those counties who, prior to June 18, 1993, utilized voter files that do not contain telephone numbers of registered voters, the provisions of Subsections J and L of Section 1-5-2 NMSA 1978 and Paragraph (4) of Subsection A of Section 1-5-7 NMSA 1978 regarding dissemination of voter telephone numbers shall apply only to individuals registering to vote after January 1, 1994.

**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.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added Subsection D.

**Compiler's notes.** - The reference to Paragraph (4) of Subsection A of this section in Subsection D is incorrect, since Paragraph (4) does not relate to voter telephone numbers.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections § 109.

29 C.J.S. Elections § 47.

### **1-5-8. Voter lists; signature rosters; number; distribution.**

A. One copy of the signature roster shall be prepared for each precinct. On the cover of such signature roster shall be printed the words, "Copy for the County Clerk". Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board in lieu of the poll book.

B. The county clerk shall prepare three copies of the voter list for each precinct. Of the three copies prepared, one copy shall not include voter social security numbers. He

shall deliver two of the copies to each precinct board in lieu of bound certificates of registration. One copy of the voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only.

**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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 36 and Laws 1993, ch. 316, § 36, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificates" for "affidavits" in the second sentence in Subsection B. The section is set out as amended by Laws 1993, ch. 316, § 36. See 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, added the second sentence and substituted "the" for "such" in the third sentence in Subsection B.

**Certified copies of registration lists not part of return.** - 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).

### **1-5-9. Signature rosters; certificate.**

Any certificate required by the Election Code [this chapter] for pollbooks shall be similarly required for signature rosters in substantially the same form to the extent it serves the same purpose.

**History:** 1953 Comp., § 3-5-9, enacted by Laws 1969, ch. 240, § 111.

### **ANNOTATIONS**

**Cross references.** - For signature roster certificates, see 1-11-16 NMSA 1978.

### **1-5-10. Voter lists; signature rosters; 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 the voter list for use of the voters prior to voting. The posted copy shall not contain a listing of voter social security numbers.



B. The presiding judge of the precinct board shall assign one judge of the board to be in charge of one copy of the voter list 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 election clerk to be in charge of the signature roster.

D. The judge assigned to the voter list 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 such voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or 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, then the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board.

F. No voter shall be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

G. After the poll is closed, the election clerk in charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears.

**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.

## **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, added the last sentence of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Elections § 109.

29 C.J.S. Elections § 49.

### **1-5-11. 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 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 [this chapter] for poll books.

C. The punishment for willful destruction, defacement, unauthorized alteration or improper disposition of signature rosters used in an election shall be the same as for similar treatment of poll books.

**History:** 1953 Comp., § 3-5-12, enacted by Laws 1969, ch. 240, § 113; 1987, ch. 327, § 5.

### **ANNOTATIONS**

**Cross references.** - For preservation and disposition of pollbooks, see 1-12-30 NMSA 1978.

#### **1-5-12. 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 he offers to vote shall be permitted to vote in the precinct pursuant to the National Voter Registration Act of 1993.

B. The 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 an emergency paper ballot, provided he has first signed or marked both the signature roster and checklist of registered voters.

C. The emergency paper ballot 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 no voter shall be permitted to vote for a candidate of a party different from the party designation shown on his 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.

E. No verbal authorization from the county clerk to allow a person to vote shall be permitted.

**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.

## ANNOTATIONS

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

For definition of voter, see 1-1-5 NMSA 1978.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 37 and Laws 1993, ch. 316, § 37, both effective June 18, 1993, and both approved April 8, 1993, which, 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". The section is set out as amended by Laws 1993, ch. 316, § 37. See 12-1-8 NMSA 1978.

**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".

**National Voter Registration Act of 1993.** - The National Voter Registration Act of 1993, referred to in Subsection A, appears as 42 USCS § 1973gg et seq.

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

29 C.J.S. Elections § 51.

**1-5-13. Signature roster; use by board of registration.**

The board of registration shall use the signature roster in lieu of the voter's original certificate of registration to determine when voters have not voted.

**History:** 1953 Comp., § 3-5-14, enacted by Laws 1969, ch. 240, § 115; 1993, ch. 314, § 38; 1993, ch. 316, § 38.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 38 and Laws 1993, ch. 316, § 38, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit". The section is set out as amended by Laws 1993, ch. 316, § 38. See 12-1-8 NMSA 1978.

### **1-5-14. File maintenance lists.**

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

B. The county clerk shall be furnished with two copies of the file maintenance lists.

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

D. The county clerk shall also be furnished with copies of the list to give 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, voter's day and month of birth or voter's telephone number, if prohibited by the voter.

E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks shall furnish the secretary of state with a copy of the voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the voter file to the secretary of state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration.

**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.

## ANNOTATIONS

**1995 amendments.** - Laws 1995, ch. 124, § 7, approved April 5, 1995 and effective January 1, 1996, amended Subsection D to delete "two" preceding "copies". However, Laws 1995, ch. 166, § 4 was approved April 15, 1995, and, 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". This section is set out as amended by Laws 1995, ch. 166, § 4. See 12-1-8 NMSA 1978.

**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.

### **1-5-15. Voter file; duplicate voter file; use.**

A. After preparation of the file maintenance list, the county clerk shall immediately have a duplicate voter file prepared. Thereafter, the duplicate voter file shall be maintained unused and intact under the supervision of the county clerk except as otherwise provided in the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

B. All derivative and incidental machine processing shall be done from the voter file.

C. In case of loss or damage of the voter file, a new voter file shall be made from the corresponding duplicate voter file. No other use shall be made of the duplicate voter file.

D. During the time of such duplication, the county clerk shall see that the duplicate voter file is safeguarded against loss, damage or unauthorized alteration.

**History:** 1953 Comp., § 3-5-19, enacted by Laws 1969, ch. 240, § 120; 1975, ch. 255, § 71.

### **ANNOTATIONS**

**Cross references.** - For registration binders and their contents as public records, see 1-4-12 NMSA 1978.

**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).

**County chairman of political party is entitled to have working master record** of the voter registration records of the county copied, or duplicated at his expense under the county clerk's supervision as these records are public records. *Ortiz v. Jaramillo*, 82 N.M. 445, 483 P.2d 500 (1971).

### **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. Program records; instructions; status; protection.**

A. Program records and instructions for their 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. Program records and instructions for their use shall remain the property of the designated data processor.

C. Verified, identified and approved program records 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.

### ANNOTATIONS

**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 county clerk shall employ such means for preparation of voter lists and signature rosters as can be functionally duplicated elsewhere with reasonable cost and convenience.

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 county clerk shall procure and preserve sufficient duplicate program information and operating instructions with each duplicate program record so that in case of disaster the duplicate master record, the duplicate program record and the duplicate additional program information 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.

## ANNOTATIONS

**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. 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.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 39 and Laws 1993, ch. 316, § 20, both effective June 18, 1993, and both acts approved April 8, 1993, which deleted "Affidavit of" preceding "Registration" in the section heading; in Subsection A, substituted "and assure that the certificate" for "of the affidavit" and "is" for "implementing the Automated Voter Records System Act. Such forms shall be"; in Subsection B, substituted "certificate" for "affidavit" and inserted "telephone number at the applicant's option"; deleted "for the signature of the registration officer," following "applicant," in Subsection C; in Subsection D, substituted "certificate" for "affidavit" and "the certificate of registration" for "such affidavit"; and, in Subsection E, substituted "certificate of registration" for "affidavit". The section is set out as amended by Laws 1993, ch. 316, § 39. See 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, in Subsection B, deleted "county" following "post office" and "place of birth" following "date of birth".

**The 2001 amendment,** effective June 15, 2001, deleted "machine" preceding "data processing systems" in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 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.

### **1-5-20. Registration; filing.**

The secretary of state shall prescribe the method of filing and maintaining certificates of registration in any county implementing the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

**History:** 1953 Comp., § 3-5-25.1, enacted by Laws 1977, ch. 222, § 11; 1993, ch. 314, § 40; 1993, ch. 316, § 40.

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 40 and Laws 1993, ch. 316, § 40, both effective June 18, 1993, and both approved April 8, 1993, which deleted "Affidavits of" preceding "Registration" in the section heading and substituted "certificates" for "affidavits". The section is set out as amended by Laws 1993, ch. 316, § 40. See 12-1-8 NMSA 1978.



## **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 county clerk or county with data processing services in the implementation and maintenance of the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] and in carrying out such other services as are reasonably related to providing automated data processing of the voter records system.

B. The designated data processor shall be responsible for the identification of the voter file and program records and parts thereof and shall preserve and safeguard them from loss, damage, unauthorized alteration, unauthorized access thereto and unauthorized reproduction thereof and shall insure their continued use and accessibility while such file and records 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 county clerk or his designated agent.

D. The designated data processor shall provide the county clerk of the county with data processing services in the implementation and maintenance of the unofficial election canvassing system.

E. The unofficial election canvassing system shall be tested by the secretary of state at least thirty days prior to an election.

F. The secretary of state shall certify the unofficial election canvassing system of any county at least twenty days prior to an election.

**History:** 1953 Comp., § 3-5-26, enacted by Laws 1975, ch. 255, § 75; 1989, ch. 392, § 9.

## **1-5-22. Unlawful disposition of voter file; penalty.**

A. Unlawful disposition of voter file consists of the willful selling, loaning or otherwise surrendering the voter file, duplicates of such file or a part thereof by any of the following persons:

- (1) a data processor;
- (2) his agent or employee;
- (3) a state or county officer;
- (4) his deputy or assistant; or

(5) his employee or agent

to anyone not authorized by the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] to have possession of such file.

B. For purposes of this section, a file maintenance list shall be considered a voter file or a part thereof.

C. Any data processor, officer, deputy, assistant, agent or employee who commits unlawful disposition of voter file is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-5-27, enacted by Laws 1975, ch. 255, § 76.

### **ANNOTATIONS**

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

### **1-5-23. Unlawful destruction or alteration of active data processing media, voter file, file maintenance list, program records, instructions and voter lists; penalty.**

A. Unlawful destruction or alteration of active data processing media, voter file, file maintenance list, program records, instructions or voter lists consists of the unauthorized destruction of, or the unauthorized alteration of, or the erasure of information from, or the rendering unusable for their lawfully intended purpose of such media, files, records, instructions and lists or parts thereof by any person.

B. Any person who commits unlawful destruction or alteration of active data processing media, voter file, file maintenance lists, program records, instructions or voter lists is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-5-28, enacted by Laws 1975, ch. 255, § 77.

### **ANNOTATIONS**

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

### **1-5-24. Requests for statistical data, voter data, mailing labels or special voter lists.**

A. The county clerk shall authorize the data processor to furnish statistical data, voter data, mailing labels or special voter lists only upon written request to the county clerk and after compliance with the requirements of this section, provided, however, all requesters shall be treated equally by the data processor 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 shall not provide data or lists that include voters' social security numbers, codes used to identify agencies where voters have registered, 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. Each requester of statistical data shall sign an affidavit that such statistical data shall be used for information or research purposes only and shall not be made available or used for unlawful purposes.

E. 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.

### **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, added Subsection B, redesignated former Subsections B to D, as Subsections C to E, and in Subsections C and D deleted "commercial or" preceding "unlawful purposes".

### **1-5-25. Unlawful use of statistical data; unlawful use of voter data, mailing labels or special voter lists; penalties.**

A. Unlawful use of statistical data consists of use of statistical data in such a manner as to derive information, the use or possession of which would be otherwise prohibited under the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

B. 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 Automated Voter Records System Act.

C. Any person, organization or corporation or agent, officer, representative or employee thereof who commits unlawful use of statistical data, 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 which was unlawfully used.

D. Each and every unlawful use of statistical data, 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.

## **ANNOTATIONS**

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

**The 2001 amendment,** effective June 15, 2001, increased the fine in Subsection C from ten dollars to one hundred dollars.

### **1-5-26. Contractual agreement required with data processor.**

A. Each county implementing the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978] shall enter into a written contractual agreement with the data processor notwithstanding the fact that the data processor may be a department of county, municipal or state government. Parties to the contractual agreement shall be the county, the county clerk and the data processor.

B. All contractual agreements shall be approved by the secretary of state, with the assistance of the automated voter records system advisory committee, before they are valid.

C. The secretary of state shall provide by regulation the contractual provisions necessary for approval.

**History:** 1953 Comp., § 3-5-31, enacted by Laws 1975, ch. 255, § 80.

### **1-5-27. Automated voter records system advisory committee; creation.**

A. There is created the "automated voter records system advisory committee" consisting of the director of the bureau of elections, who shall be chairman, and eight members appointed by the secretary of state, as follows:

(1) two data processors;

(2) four county clerks selected from a list submitted by the recognized state association of county clerks; and

(3) two registered voters.

B. No more than four of the eight appointed members shall be registered from the same political party.

**History:** 1953 Comp., § 3-5-32, enacted by Laws 1975, ch. 255, § 81; 1987, ch. 249, § 17.

### **1-5-28. Automated voter records system advisory committee; duties.**

The automated voter records system advisory committee shall assist the secretary of state to:

- A. establish policy and uniform procedure for the implementation and operation of the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978];
- B. establish standardized computer inputs and outputs;
- C. functionally prove the adequacy of program records;
- D. create and administer tests for use in approval of data processors; and
- E. aid the counties in the orderly transition to an automated voter records system.

**History:** 1953 Comp., § 3-5-33, enacted by Laws 1975, ch. 255, § 82.

### **1-5-29. Automated voter records system advisory committee; compensation; meetings.**

A. Members of the automated voter records system advisory committee, except the director of the bureau of elections, shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for nonsalaried state officers.

B. No fewer than one meeting shall be called annually by the secretary of state.

C. Each odd-numbered year, the committee shall review the certificate of registration and the automated voter records system format and make recommendations for necessary revisions to the secretary of state.

**History:** 1953 Comp., § 3-5-34, enacted by Laws 1975, ch. 255, § 83; 1987, ch. 249, § 18; 1993, ch. 314, § 41; 1993, ch. 316, § 41; 2001, ch. 146, § 10.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 41 and Laws 1993, ch. 316, § 41, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Subsection C. The section is set out as amended by Laws 1993, ch. 316, § 41. See 12-1-8 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "No fewer than one meeting" for "No less than two meetings" in Subsection B; and deleted "At the first meeting of" from Subsection C.

### **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 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 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;

(6) provide a centralized system for each county to identify the precinct to which a voter should be assigned for voting purposes; and

(7) prescribe a procedure for phasing in or converting existing computerized records generated and maintained pursuant to the Automated Voter Records System Act [1-5-1 to 1-5-29 NMSA 1978].

**History:** Laws 1989, ch. 298, § 1.

### **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. develop and 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, to require deadlines and time limits for updating of voter files, and to provide for the update of voter files at each polling place for the next election.

**History:** Laws 1989, ch. 298, § 2.

## **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 1-6-18 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) 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

(2) 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.

## 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. For provisions of former section, see 1985 Replacement Pamphlet.

**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).

**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.

### **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., amends. XIX and XXVI.

**The 1993 amendments** - Identical amendments to this section were enacted by Laws 1993, ch. 19, § 1 and Laws 1993, ch. 21, § 1, both effective June 18, 1993, and both approved March 12, 1993, which, in Subsection A, deleted former Paragraphs (1) through (6), identifying persons eligible to vote by absentee ballot, and deleted "statewide" preceding "questions". The section is set out above as amended by Laws 1993, ch. 21, § 1. See 12-1-8 NMSA 1978.

**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.

**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.**

A. Application by a federal qualified elector 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 his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of the county in which the voter resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978]; 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 subscribed by the applicant.

**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.

#### **ANNOTATIONS**

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

**1993 amendments.** - Laws 1993, ch. 20, § 1 amended this section, effective June 18, 1993, by rewriting Subsection C and deleting Subsection D relating to witnessing applications for absentee ballots, and was approved March 12, 1993. However, identical amendments to this section were enacted by Laws 1993, ch. 19, § 2 and Laws 1993, ch. 21, § 2, both approved March 12, 1993, and both effective June 18, 1993, substituting "such information as is necessary" for "information to establish his qualification" in the second sentence of Subsection B. Identical amendments to this section were also enacted by Laws 1993, ch. 314, § 42 and Laws 1993, ch. 316, § 42, both effective June 18, 1993, and both approved April 8, 1993, which 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. The section is set out as amended by Laws 1993, ch. 316, § 42. See 12-1-8 NMSA 1978.

**The 1997 amendment** added the language beginning "provided that" at the end of Subsection B. Laws 1997, ch. 201 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**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.

**Signing in actual presence of clerk mandatory.** - It is mandatory that a voter swear to and sign the affidavits on the application and the absentee ballot in the actual presence of the county clerk before the clerk can notarize the documents. *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 § 360.

29 C.J.S. Elections § 210(4).

### **1-6-4.1. Federal write-in absentee ballot for overseas voters in general elections for federal offices.**

A. Except as provided in Subsection C of this section, a federal write-in absentee ballot for federal 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 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 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; or

(3) the absentee ballot of the overseas voter is received by the county clerk 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.

## **ANNOTATIONS**

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

### **1-6-5. Processing application; issuance of ballot; marking and delivery of ballot in person.**

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 has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall 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 his application and, if rejected, shall explain why the application was rejected.

D. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and 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. 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. No absent voter shall be permitted to change his 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.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. 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 [Chapter 1 NMSA 1978] other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible

any posters, signs or other forms of campaign literature whatsoever in the clerk's office. 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 fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

F. Commencing with the twentieth day prior to an election, an absent voter may vote in person, on an electronic voting machine at the county clerk's office or at an alternate location established by the county clerk; provided, a county clerk may allow an absent voter to vote on an electronic voting machine beginning on the fortieth day before an election. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternative location.

G. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

H. No absentee ballot shall be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

I. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act.

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.

**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.

## ANNOTATIONS

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

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 43 and Laws 1993, ch. 316, § 43, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Subsection B. The section is set out as amended by Laws 1993, ch. 316, § 43. See 12-1-8 NMSA 1978.

**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.

**2001 amendments.** - Laws 2001, ch. 58, § 1, effective June 15, 2001, in Subsection F, moving "on an electronic voting machine" from preceding "at an alternate location" to preceding "at the county clerk's office" and inserting "; provided, a county clerk may allow an absent voter to vote on an electronic voting machine beginning on the fortieth day before the election" was approved March 15, 2001. However, this section was also amended by Laws 2001, ch. 49, § 1, effective June 15, 2001, which would have been amended to read as follows:

"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 has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall 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 his application and, if rejected, shall explain why the application was rejected.

"D. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application 'accepted' and 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. 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. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. 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.

"E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. 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 other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. 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 fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

"F. Commencing with the twentieth day prior to an election, an absent voter may vote in person at the county clerk's office or on an electronic voting machine at an alternate location established by the county clerk. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on the Saturday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternative location.

"G. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

"H. No absentee ballot shall be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

"I. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less



than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act."

Because Laws 2001, ch. 49 was approved earlier on March 15, 2001, this section is set out as amended by Laws 2001, ch. 58, § 1. See 12-1-8 NMSA 1978.

**Uniformed and Overseas Citizens Absentee Voting Act.** - Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act, referred to in Subsection I, appears as 42 U.S.C.S. § 1973ff-2.

**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. Federal absentee ballot distribution.**

In the distribution of federal absentee ballots:

A. absent uniformed services voters, federal qualified electors, members of the merchant marine and members of the uniformed service shall receive the entire ballot; and

B. overseas voters shall receive only ballots for federal candidates.

**History:** 1978 Comp., § 1-6-5.1, enacted by Laws 1991, ch. 105, § 10.

### **1-6-5.2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1999, ch. 267, § 36 repeals 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 1995 Replacement Pamphlet. For present comparable provisions, see 1-6-5.3 NMSA 1978.

### **1-6-5.3. Secretary of state; emergency authority.**

The secretary of state shall have emergency authority to prescribe by regulation procedures to accommodate the special absentee ballot requirements brought on by activation of the New Mexico national guard and reserve units or for individuals who are overseas voters, and procedures for a special write-in absentee ballot available at least ninety days prior to an election to cover candidates for federal offices.

**History:** Laws 1999, ch. 267, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 267 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **1-6-5.4. Security; counting and canvassing.**

The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots, including procedures specifying that machines and ballot containers remain locked and that ballots not be removed prior to election day; 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; handling of, counting and canvassing of absentee ballots; and sorting of absentee ballots by representative district for canvassing purposes.

**History:** Laws 1999, ch. 267, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 267 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

A. For each election, the county clerk shall keep an "absentee ballot register", in which he 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 voter, a federal qualified elector or an overseas citizen voter; and
- (7) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted in the county clerk's office or at an alternate location.

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot or a notice of rejection to the applicant.

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 with applicable information shown in the absentee ballot register for each applicant up to 5:00 p.m. on the Thursday 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. 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 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 Friday immediately following the election.

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

### ANNOTATIONS

**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.

**The 2001 amendment**, effective June 15, 2001, inserted the second sentence of Subsection C, which discusses absentee ballot register availability to the public.

### 1-6-7. Form of absentee ballot.

As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for emergency ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible. Absentee ballots shall be printed at least forty days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election.

**History:** 1953 Comp., § 3-6-7, enacted by Laws 1969, ch. 240, § 133; 1971, ch. 317, § 8; 1975, ch. 255, § 87; 1999, ch. 267, § 10.

### ANNOTATIONS

**Cross references.** - For form of absentee presidential ballot, see 1-21-7 NMSA 1978.

**The 1999 amendment**, effective June 18, 1999, substituted "as nearly as possible" for "as nearly as practicable" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 29 C.J.S. Elections § 210(5).

### 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 red 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."

**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.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "under oath" following "executed" in the first sentence of Subsection C.

**The 1997 amendment** added the language beginning "provided, the official mailing" at the end of Paragraph A(2). Laws 1997, ch. 201 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1999 amendment**, effective June 18, 1999, substituted "voter" for "person" twice in Subsection C.

**Uniformed and Overseas Citizens Absentee Voting Act.** - The federal Uniformed and Overseas Citizens Absentee Voting Act, referred to in the first sentence in Subsection B, appears as 42 U.S.C.S. § 1973ff et seq.

### **1-6-9. Manner of voting.**

A. Any person voting pursuant to the Absent Voter Act [1-6-1 to 1-6-18 NMSA 1978] shall secretly mark his absentee ballot in the manner provided in the Election Code [Chapter 1 NMSA 1978] for marking emergency 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 an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors shall either deliver or mail the official mailing envelope 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. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.

**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.

### **ANNOTATIONS**

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

**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".

**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 1999 amendment,** effective June 18, 1999, made stylistic changes in Subsection A.

**Signing in actual presence of clerk mandatory.** - It is mandatory that a voter swear to and sign the affidavits on the application and the absentee ballot in the actual presence

of the county clerk before the clerk can notarize the documents. *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(7).

### **1-6-9.1. Voting by electronic ballot.**

An absent voter voting on an electronic ballot shall secretly mark the ballot in accordance with the instructions on that ballot, and the vote cast shall be recorded on an electronic voting machine.

**History:** 1978 Comp., § 1-6-9.1, enacted by Laws 1991, ch. 105, § 13; 1993, ch. 20, § 4; 1999, ch. 267, § 13.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted "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.

**The 1999 amendment**, effective June 18, 1999, rewrote the section, which formerly read: "Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow ( ) ( ) in pencil directly to the right of the candidate's name or the proposed question. The voter shall then place the marked ballot in the official inner envelope and securely seal the envelope and then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope".

### **1-6-9.2. Preparation of electronic voting machines.**

A. Five days before an electronic voting machine is issued for absentee voting as provided in Section 1-6-9.1 NMSA 1978, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with the specifications for electronic voting machines adopted by the secretary of state.

B. One day before any electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and all county party chairmen the type and serial number of each voting machine to be used.

**History:** Laws 1999, ch. 267, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 267 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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, 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 or until it is canceled and destroyed in accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to a 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, federal voters, overseas citizen voters and federal qualified electors and report the number from each category to the secretary of state.

C. At 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. The county clerk shall execute a certificate of destruction, which shall include the numbers on the absentee 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.

### **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 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.

### **1-6-11. Delivery of absentee ballots to absent voter precincts.**



A. On election day, the county clerk shall deliver the absentee ballots 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 absentee ballots for each absent voter precinct shall be separately wrapped, and the special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk. Upon delivery of the absentee ballots to the absent voter precinct board, the special deputy county clerk shall remain in the polling place of the absent voter precinct until he has observed the opening of the official mailing envelope, the deposit of the ballot in the locked ballot box and the listing of the names on the official mailing envelope in the signature rosters. Upon such delivery of absentee ballots, the special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge and he shall return such 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.

B. At 7:00 a.m. on election day, the county clerk shall deliver the electronic voting machines used for absentee voting 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 obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine and shall verify the public counter number on the machine, and he shall 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.

#### **ANNOTATIONS**

**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 repeals 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 any 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 election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected - Missing Signature" in the "Notations" column of the signature rosters. 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. The accredited challengers may examine 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 prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code [Chapter 1 NMSA 1978].

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the official mailing envelopes and deposit the ballots in their still-sealed official inner envelopes in the locked ballot box; and

(2) the 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.

E. Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voter had been present and voted in person. It is unlawful for any 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.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that no member of the absent voter precinct board shall open an official mailing envelope or count and canvass any absentee ballot prior to the day of the election.

**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.

### ANNOTATIONS

**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.

**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.

**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.

**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.

**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.** - The instructions to absentee voter precinct boards promulgated by the bureau of elections in the secretary of state's office provide that when a ballot is marked as a straight ticket but actually voted as a split ticket, the votes cast in individual races should be counted even if they are cast for a candidate in a different political party than the candidates for whom the straight ticket is voted. *Klumker v. Van Allred*, 112 N.M. 42, 811 P.2d 75 (1991).

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).

### **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 emergency 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 emergency 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.

### **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 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. Voting in person prohibited.**

A. Except as provided in Section 1-6-16.1 NMSA 1978, no person who has been issued an absentee ballot shall vote in person at his precinct poll.

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 of the county where he is registered to vote, a sworn affidavit stating that he did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. 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.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, added the exception at the beginning of Subsection A.

#### **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 present himself at his assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on an emergency 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 emergency paper ballot.

C. The presiding election judge shall put all 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 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) if a voter did in fact make application for an absentee ballot; and

(2) if an 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 and regulations deemed necessary to preserve the secrecy of the emergency paper ballots.

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

### ANNOTATIONS

**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.

**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.

### **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 repeals 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.

**Compiler's notes.** - Laws 1999, ch. 267, § 21 purported to amend this section, effective June 18, 1999, but could not be given effect because of the repeal of the section by Laws 1999, ch. 55, § 1. As amended, the section would have read:

"If any person voting under the provisions of the Absent Voter Act dies after mailing or delivering his absentee ballot to the county clerk but before the absentee ballot is counted, the official outer envelope shall be marked 'canceled by the precinct board' and preserved by the county clerk in the same manner as provided for other uncast ballots in Subsection B of Section 1-6-10 NMSA 1978."

## **1-6-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 249, § 52 repeals 1-6-18 NMSA 1978, as enacted by Laws 1975, ch. 255, § 91, relating to marking the affidavit of registration, effective June 19, 1987. For provisions of the former section, see 1985 Replacement Pamphlet.

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

This act [1-6-19, 1-6-20, 1-6-22, 1-6-24, 1-6-25 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 state representative district in the county. The boundaries of such precinct shall coincide with the boundaries of the state representative district except for multicounty representative districts. In multicounty representative districts, the bounddaries [boundaries] of the absent voter precinct in each county shall coincide with the boundaries of that portion of the representative district lying within the county.

B. Absent voter precincts shall be identified by the name of the county and the state representative district number. In the case of multicounty representative districts, the absent voter precinct in each county shall be distinguished 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.

## **1-6-21. Consolidation of absent voter precincts.**

Absent voter precincts may be consolidated by the governing authority if it deems it desirable and so directs by resolution.

**History:** 1953 Comp., § 3-6-20.1, enacted by Laws 1975, ch. 255, § 93; 1977, ch. 222, § 15; 1999, ch. 267, § 22.



## ANNOTATIONS

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

**The 1999 amendment**, effective June 18, 1999, substituted "by the governing authority if it deems" for "if the governing authority deems".

### **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 such precinct is created or consolidated.

**History:** 1953 Comp., § 3-6-21, enacted by Laws 1969, ch. 54, § 4; 1975, ch. 255, § 94.

### **1-6-23. Absent voter precinct polling place; hours on election day and subsequent days.**

The county clerk or statutorily appointed supervisor of the election shall determine the hours during which the absent voter precinct polling place shall be open for delivery and counting of ballots on election day and subsequent days until all ballots are counted.

**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.

## ANNOTATIONS

**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. Absent voter precinct board appointment.**

A. The county clerk of each county shall appoint absent voter precinct board members and their respective alternates for each absent voter precinct and shall compensate them at an hourly rate set by the county clerk.

B. A minimum of three precinct board members shall be appointed to the absent voter precinct board with no more than two members belonging to the same political party.

**History:** 1953 Comp., § 3-6-22, enacted by Laws 1969, ch. 54, § 5; 1971, ch. 317, § 13; 1975, ch. 255, § 96; 1999, ch. 267, § 24.

## ANNOTATIONS

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

For precinct board compensation, see 1-2-16 NMSA 1978.

**The 1999 amendment**, effective June 18, 1999, designated the previously undesignated paragraph as Subsection A, and in that subsection, deleted "and compensate" following "each county shall appoint", and substituted "and shall compensate them at an hourly rate set by the county clerk" for "in the manner specified in the Election Code for other precinct board members", and added Subsection B.

### **1-6-25. Watchers and challengers for absent voter precinct; appointment.**

Watchers, challengers and alternate challengers may be appointed for each absent voter precinct in the manner specified for the appointment of watchers, challengers and alternate challengers in the Election Code [this chapter].

**History:** 1953 Comp., § 3-6-23, enacted by Laws 1969, ch. 54, § 6.

#### **ANNOTATIONS**

**Cross references.** - For appointment of challengers, see 1-2-21 NMSA 1978.

For appointment of watchers, see 1-2-27 NMSA 1978.

## **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 repeals 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 1995 Replacement Pamphlet.

## **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 [this chapter]. 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 and regulations providing for the organization and government of that party and shall file the rules and regulations with the secretary of state. Uniform rules and regulations 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 and regulations 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 residence and counties of residence of at least one-half of one percent of the total votes cast for the office of governor or president at the preceding general election who declare by their signatures on such petition that they are voters of New Mexico and that they desire the party to be a qualified political party in New Mexico.

B. Each county political party organization may adopt such supplementary rules and regulations insofar as they do not conflict with the uniform state rules and regulations 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. All political parties that appeared on the 1988 New Mexico general election ballot shall continue to be qualified political parties unless disqualified in accordance with this subsection. Beginning with the general election in 1990, a qualified political party shall cease to be qualified for the purposes of the Election Code [this chapter] 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. After giving notice by registered mail to the state chairman of the party at his last known address, the secretary of state shall remove all material dealing with the political party from his 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. The county clerk is then authorized to remove such rules and regulations from the county files. The county clerk shall immediately notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party must 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.

## ANNOTATIONS

**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."

**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.

**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

**Compiler's notes.** - The following notes are from opinions rendered under former Election Code provisions.

**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. 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. 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. 6540.

**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. 6559.

**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.

### **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. 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 [this chapter] 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.

## **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 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 [this chapter].

**History:** 1953 Comp., § 3-8-1, enacted by Laws 1969, ch. 240, § 151; 1975, ch. 255, § 99.

#### **ANNOTATIONS**

**Cross references.** - For qualified political party, see 1-7-2 NMSA 1978.

**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).

**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).

**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).

**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 (1946).

**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 and regulations of a minor political party require nomination by political convention:

(1) the chairman 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, 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 chairman 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 second Tuesday in July 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 second Tuesday in July 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 any 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.

## 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 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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 44 and Laws 1993, ch. 316, § 44, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificates" for "affidavits" in Subsection D. The section is set out as amended by Laws 1993, ch. 316, § 44. See 12-1-8 NMSA 1978.

**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 1998 amendment**, effective March 6, 1998, inserted ", public regulation commission" in Paragraph A(1).

**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 that 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).

**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).

**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, the secretary of state shall:

- A. determine whether the method of nomination used by the certifying political party complies with the current rules and regulations of that party on file in his office;
- B. determine whether all the requirements of Sections 1-8-1, 1-8-2 and 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, certify the names of the 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.

### **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.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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).

**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).

**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).

**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**

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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).

**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).

**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. 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 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, 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 such office is a federal, state, district or multi-county 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 such office is a magistrate, county or a 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 be of the same party affiliation as the original nominee and reside in the district from which he will be elected as shown by his certificate of registration on file in the county clerk's office before the day of the governor's primary election proclamation.

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. If the vacancy is caused by the death of a nominee, the central committee may in like manner file the name of its nominee to fill the vacancy up until five days prior to the general election.

D. When the name of a nominee is filed as provided in this section, such name shall be placed on the general election ballot as the party's candidate for that office. In the case of a nominee appointed after the general election ballots are printed, such name shall be placed on the ballot by pasting the printed name of the nominee over the name of the candidate whose vacancy he fills on the general election ballot.

**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.

## ANNOTATIONS

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

**The 1995 amendment,** effective January 1, 1996, added Subsection B and redesignated former Subsections B and C as Subsections C and D.

**Constitutionality.** - This section meets the strict scrutiny test and serves a compelling state interest. *Skeen v. Hooper*, 631 F.2d 707 (10th Cir. 1980).

**Fifty-six-day rule of Subsection B (now C) invalid.** - The 56-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).

**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.

**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).

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.

56-day time limit applicable to resignations after primary. While the 56-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 56-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.

**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).

**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.

**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).

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.

**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).

**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).

**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).

**Vacancies in single county and multicounty districts.** - 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.

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.

**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).

**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.

**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.

**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. 5173 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 217 et seq.  
29 C.J.S. Elections §§ 93, 136.

### **1-8-9. General election; withdrawal of candidates.**

No candidate shall withdraw from a general election unless he withdraws at least sixty-three days prior to that election.

**History:** 1953 Comp., § 3-8-8.1, enacted by Laws 1975, ch. 255, § 104.

### **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**

**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.

**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.

**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 in June of each even-numbered year.

**History:** 1953 Comp., § 3-8-10, enacted by Laws 1969, ch. 240, § 160.

### **ANNOTATIONS**

**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 1993 amendment,** effective November 15, 1993, substituted "shall" for "must" in Subsection D, and added Subsections G through I and the last sentence.

**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 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 1998 amendment**, effective March 6, 1998, substituted "the" for "such" twice in Subsection B and inserted "public regulation commission" in Subsection C.

**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.

**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. 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. 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 time set for filing declarations of candidacy or statements of candidacy for convention designation, whichever the case may be, to include an 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.

## ANNOTATIONS

**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. 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.

**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).

**When no appeal as of right, statute governs.** - Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is governed by the ten-day limit set forth in Subsection B(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** - Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** - One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**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.

**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).

**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. Candidates for any other office shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer. Candidates for county office shall also pay filing fees or file the proper paupers' statements at the time of filing declarations of candidacy.

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

#### **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 3-18-19, 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 repeals 1-8-21 NMSA 1978, as amended by Laws 1993, ch. 55, § 2, and enacts the above section, effective January 1, 1996. For provisions of former section, see 1995 Replacement Pamphlet.

Laws 1996, ch. 20, § 2 repeals 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 the above section, effective January 1, 1997. For provisions of former section, see 1996 Cumulative Supplement.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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 third 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, his name and address and the name of the political party that the candidate represents, and shall certify that the candidate has been a member of that political party for the period of time required by the Election Code [this chapter].

**History:** Laws 1993, ch. 55, § 11.

### **1-8-22 to 1-8-24. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 2, § 13 repeals 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. For provisions of former sections, see 1984 replacement pamphlet.

### **1-8-25. Primary election law; declaration of candidacy; proper filing officer.**

The proper filing officer for filing declarations of candidacy 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.

## ANNOTATIONS

**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 and declarations of candidacy for retention of a justice of the supreme court or judge of the court of appeals shall be filed with the proper filing officer on the second 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 and declarations of candidacy for retention for all affected district judicial offices shall be filed with the proper filing officer on the third Tuesday of March of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

C. Certificates of designation shall be submitted to the secretary of state on the first Tuesday following the preprimary convention at which the candidate's designation took place between the hours of 9:00 a.m. and 5:00 p.m.

D. No 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 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 his 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.

E. If a candidate is notified by the proper filing officer that he is not qualified to have his 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.

**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.

## 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.

**1993 amendments.** - Laws 1993, ch. 55, § 3, enacted an amendment to this section, effective November 15, 1993, approved March 18, 1993, which added Subsections A and D, and redesignated former Subsections A, B, and C as Subsections B, C, and E; inserted "by nominating petition" and substituted "last Tuesday" for "first Tuesday" in Subsection B; in Subsection E, inserted "nominating" and "the certificate of designation, if necessary" in the first sentence and inserted "appropriate" in the second sentence; and made stylistic changes. Identical amendments to this section were enacted by Laws 1993, ch. 314, § 45 and Laws 1993, ch. 316, § 45, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Subsection C. The section is set out as amended by Laws 1993, ch. 316, § 45. See 12-1-8 NMSA 1978.

**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 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 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 1997 amendment** 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. Laws 1997, ch. 15 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**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 repeals 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. For provisions of former section, see 1984 replacement pamphlet.

**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, effective November 15, 1993, approved March 18, 1993, 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. However, identical amendments to this section were enacted by Laws 1993, ch. 314, § 46 and Laws 1993, ch. 316, § 46, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" throughout the section, but did not make the same changes as the first amendment. The section is set out as amended by Laws 1993, ch. 316, § 46. See 12-1-8 NMSA 1978.

**Primary Election Law.** - See 1-8-10 to 1-8-52 NMSA 1978.

**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).

**Section not applicable** to person who previously failed or declined to show party affiliation. 1943-44 Op. Att'y Gen. No. 4500.

**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.

**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. 6399.

**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.

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. 6399.

**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.

### **1-8-30. Primary election law; declaration of candidacy; nominating petition; filing and form.**

A. As used in the Primary Election Law [1-8-10 to 1-8-52 NMSA 1978], "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 the county 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 the first Tuesday of June, 20 \_\_\_\_\_, and I declare that I am a resident 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	(name printed	(address
as	(city or	
signature)	as	
registered)	registered)	rt. no.)

2.

---

_____	_____	_____
(usual	(name printed	(address
as	(city or	
signature)	as	
registered)	registered)	rt. no.)."

D. In October of odd-numbered years, the secretary of state 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.

## ANNOTATIONS

**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.

**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 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 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 2001 amendment**, effective June 15, 2001, changed the paper length for nominating petitions from fourteen inches long to eleven inches long in Subsection C.

**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. 5486 (opinion rendered under former law).

**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).

**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. 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 his residence as his address. If the person does not have a residential address, he may provide his mailing address.

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 sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(3) 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;

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

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

D. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code [Chapter 1 NMSA 1978], except that Paragraphs (1) and (4) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties.

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

## ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 47 and Laws 1993, ch. 316, § 47, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Paragraph B(3). The section is set out as amended by Laws 1993, ch. 316, § 47. See 12-1-8 NMSA 1978.

**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.

**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).

**Failure to fill in entire line** does not disqualify signature, notwithstanding Subsection E [now Subsection C]. *Simmons v. McDaniel*, 101 N.M. 260, 680 P.2d 977 (1984).

**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. 5486 (opinion rendered under former law).

**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).

### **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 state board of education, 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 he 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 he seeks, and file a new declaration of candidacy and nominating petitions for the office for which he 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 he 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.

## ANNOTATIONS

**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.

**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 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 1998 amendment**, effective March 6, 1998, inserted "; for the public regulation commission, fifty voters" in Subsection C.

**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.

**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).

**When no appeal as of right, statute governs.** - Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is governed by the ten-day limit set forth in Subsection B(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** - Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** - One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

## **1-8-36. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 156, § 3, repeals 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, state board of education, 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 he is affiliated as shown by his certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which he 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 before 5:00 p.m. on the second 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 in the proper slot on the voting machine or on the proper line provided on an absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

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 [Chapter 1 NMSA 1978], including the obligations to report pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], except that he shall not be entitled to have his name printed on the ballot.

F. No unopposed write-in candidate shall have his nomination certified unless he receives at least the number of write-in votes in the primary election as he 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. 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., § 1-8-36.1, enacted by Laws 1981, ch. 156, § 1; 1993, ch. 314, § 48; 1993, ch. 316, § 48; 1994, ch. 2, § 2; 1998, ch. 36, § 6.

## ANNOTATIONS

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

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 48 and Laws 1993, ch. 316, § 48, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Subsection B. The section is set out as amended by Laws 1993, ch. 316, § 48. See 12-1-8 NMSA 1978.

**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 1998 amendment**, effective March 6, 1998, inserted ", public regulation commission" in Subsection A and substituted "pursuant to" for "under" 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 repeals 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. For provisions of former sections, see 1984 replacement pamphlet.

### **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 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; provided the filing fee for candidates for the office of county councilman, county clerk, county assessor or sheriff in H-class counties or incorporated counties under Article 10, Section 5 of the constitution of New Mexico shall be five dollars (\$5.00).

**History:** 1953 Comp., § 3-8-26, enacted by Laws 1973, ch. 228, § 11; 1974, ch. 25, § 1; 1977, ch. 222, § 22.

## 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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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. 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. 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. 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. 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. 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.

**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.

### **ANNOTATIONS**

**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."

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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. 6407.

**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. 6419.

**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. 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. 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.**

As used in the Election Code [this chapter], an independent candidate means a person who:

A. is a candidate without party affiliation for an office to be voted on at a general election or any United States representative special election;

B. except for a candidate for the office of president or vice president, is a person who will be qualified to hold the office for which he is a candidate under the provisions of the constitution of New Mexico and the Election Code;

C. except for a candidate for the office of president or vice president, is a qualified elector registered to vote in New Mexico at the time of filing the declaration of independent candidacy and nominating petition;

D. except for a candidate for the office of president or vice president, has indicated on such person's certificate of registration a declination to designate a party affiliation;

E. has complied with the nomination procedures set forth in the Election Code for independent candidates; and

F. was not a person who appeared as a major party candidate for the same office on the primary election ballot.

**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.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 49 and Laws 1993, ch. 316, § 49, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in Subsection D. The section is set out as amended by Laws 1993, ch. 316, § 49. See 12-1-8 NMSA 1978.

**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.

**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 [this chapter] 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 on certificate of registration) being first duly sworn, say that I reside at \_\_\_\_\_ in the county of \_\_\_\_\_, New Mexico, and that I am a voter of Precinct No. \_\_\_\_\_ of the county of \_\_\_\_\_, State of New Mexico;

I have declined to designate my party affiliation as shown by my certificate of registration and I have not changed such declination subsequent to 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 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, and if the office be that of a member of the legislature or public regulation commission, that I actually reside within the district 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)

\_\_\_\_\_  
\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Residence Address)

Subscribed and sworn to or affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

---

(Notary Public)

My commission expires:  
\_\_\_\_\_".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president.

**History:** 1953 Comp., § 3-8-27.4, enacted by Laws 1977, ch. 322, § 4; 1981, ch. 147, § 7; 1987, ch. 249, § 23; 1993, ch. 314, § 50; 1993, ch. 316, § 50; 1998, ch. 36, § 7.

### ANNOTATIONS

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 50 and Laws 1993, ch. 316, § 50, both effective June 18, 1993, and both approved on April 8, 1993, which substituted "certificate" for "affidavit" twice in the form in Subsection B. The section is set out as amended by Laws 1993, ch. 316, § 50. See 12-1-8 NMSA 1978.

**The 1998 amendment,** effective March 6, 1998, rewrote the form in Subsection B.

**Section not unconstitutional** on equal protection grounds. *Anderson v. Hooper*, 632 F.2d 116 (10th Cir. 1980).

**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.

**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).

### **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)



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---

(state and zip code)

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(state and zip code)

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---

(name) (name)

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(residence address)

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(residence address)

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(mailing address)

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(mailing address)

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(city) (city)

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(state and zip code)

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(state and zip code)

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(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 determination 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

FOR ANY OFFICE EXCEPT PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county 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 resident 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 as signature) \_\_\_\_\_ (name printed (city) as registered) \_\_\_\_\_ (address registered)

2.

\_\_\_\_\_  
(usual as signature) \_\_\_\_\_ (name printed (city) as registered) \_\_\_\_\_ (address registered)

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 the county 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. The secretary of state 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 [Chapter 1 NMSA 1978].

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.

## ANNOTATIONS

**Cross references.** - For county clerk making available a sample copy of the nominating petition, see 1-8-30 NMSA 1978.

**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.

**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.

### **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 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.

**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 1998 amendment** effective March 6, 1998, inserted ", public regulation commission" in Subsection E and substituted "A" for "The" at the beginning of Subsection F.

**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 during the period commencing at 9:00 a.m. on the second Tuesday of July of each even-numbered year and ending at 5:00 p.m. on that same day and not later than 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 during the period commencing at 9:00 a.m. on the fifty-sixth day prior to the general election and ending at 5:00 p.m. on the same day.

**History:** 1953 Comp., § 3-8-27.8, enacted by Laws 1977, ch. 322, § 8; 1981, ch. 147, § 8; 1989, ch. 392, § 19.

### ANNOTATIONS

**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.

#### **1-8-53. Short title.**

This act [1-8-53 to 1-8-63 NMSA 1978] may be cited as the "Presidential Primary Act".

**History:** 1953 Comp., § 3-8-33, enacted by Laws 1977, ch. 230, § 1.

### ANNOTATIONS

**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.

#### **1-8-54. 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. 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.

### **ANNOTATIONS**

**Cross references.** - For date for holding a primary election, see 1-8-11 NMSA 1978.

#### **1-8-55. 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.

#### **1-8-56. 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.

### **ANNOTATIONS**

**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.

#### **1-8-57. 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.

### **1-8-58. 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.

## **ANNOTATIONS**

**Candidate who fails to timely withdraw** from presidential primary is legitimate candidate in that primary. *Anderson v. Hooper*, 498 F. Supp. 898 (D.N.M. 1980).

### **1-8-59. 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. 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.

## **ANNOTATIONS**

**Cross references.** - For position of names on ballot, see 1-10-3, 1-10-8 and 1-10-8.1 NMSA 1978.

**Ballot Positioning Act.** - The Ballot Positioning Act, referred to in Subsection A, 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.

## **1-8-60. 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.

### **1-8-61. 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 such party forty-two days prior to the presidential primary election held 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 19. . . . 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.

### **ANNOTATIONS**

**Cross references.** - For vote for uncommitted delegation to national convention, see 1-8-59 NMSA 1978.

### **1-8-62. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1980, ch. 13, § 6, and Laws 1980, ch. 43, § 6, both repeal 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. 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 [1-8-53 to 1-8-63 NMSA 1978]. 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.

## ANNOTATIONS

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

### **1-8-64. Authority of secretary of state and county clerks with regard to acceptance or rejection of petitions.**

The secretary of state or the county clerk shall refuse to accept any petition or any signature on any such petition which does not comply with the provisions of Sections 1-8-1 through 1-8-63 NMSA 1978.

**History:** 1978 Comp., § 1-8-64, enacted by Laws 1979, ch. 74, § 5.

## ANNOTATIONS

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

## **ARTICLE 9 VOTING MACHINES**

### **1-9-1. Secretary of state; duties.**

A. The secretary of state shall study, examine and approve all voting systems used in elections for public office in New Mexico. Any type of voting systems not approved by the secretary of state shall not 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; 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.

## ANNOTATIONS

**Cross references.** - For unlawful opening of voting machines, see 1-20-5 NMSA 1978.

**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. 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. Secretary of state; manner of approval.**

A. All voting systems approved for use in New Mexico shall meet federal election commission standards and conform to state information technology rules, standards and practices and be tested by an independent authority.

B. Any person desiring to have a type of voting system approved for use in New Mexico may apply to the secretary of state to have the system examined and approved. At the time application is made, the applicant shall direct the independent testing authority to submit its report on the system to the secretary of state.

C. Upon receipt of the report from the independent testing authority, the secretary of state shall examine and study the system. As part of the examination, the secretary of state shall require the system to be independently inspected by two voting system experts and shall require from each of them a written report on the results of their inspection.

D. Upon completion of his examination, the secretary of state shall make a written report on the result of his examination and findings and shall file such report, together

with the inspection reports of the two voting system experts, in the office of the secretary of state. Such reports and findings are public records.

E. The secretary of state shall inform the applicant in writing of the findings. If the findings show that the voting system type is adequate for the election needs of New Mexico, it shall be deemed approved for use at elections in this state.

**History:** 1953 Comp., § 3-9-3, enacted by Laws 1969, ch. 240, § 185; 1976 (S.S.), ch. 5, § 2; 2001, ch. 233, § 2.

### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, added Subsection A and redesignated the remaining subsections accordingly; substituted "system" for "machine" throughout the section; substituted "direct the independent testing authority to submit its report on the system to the secretary of state" for "pay to the secretary of state an examination fee of three hundred dollars (\$300)" in Subsection B; substituted "voting system experts" for "mechanical experts" in Subsections C and D; and substituted "report from the independent testing authority" for "application and examination fee" in Subsection C.

### **1-9-3. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 2001, ch. 233, § 16 repeals 1-9-3 NMSA 1978, as amended by Laws 1976 (S.S.), ch. 5, § 3, relating to compensation for mechanical experts, effective June 15, 2001. For provisions of former section, see 1995 Replacement Pamphlet.

### **1-9-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 2001, ch. 233, § 16 repeals 1-9-4 NMSA 1978, as amended by Laws 1993, ch. 316, § 51, relating to the specifications of lever-type voting machines, effective June 15, 2001. For provisions of former section, see 1995 Replacement Pamphlet.

### **1-9-4.1. Touch-screen direct recording electronic voting systems; standards.**

A. A touch-screen direct recording electronic voting system, as approved by the secretary of state, may be used in any election for public office in New Mexico. As used in this section, "system" means touch-screen direct recording electronic voting system.

B. The system shall:

- (1) meet performance and test standards of the federal election commission;
- (2) be an electronic computer-controlled voting system that provides for direct recording and tabulating of votes cast;
- (3) have internal operating system software, firmware, that:
  - (a) is specifically designed and engineered for the election application;
  - (b) is contained within each touch-screen voting device;
  - (c) is stored in a nonvolatile memory within each terminal;
  - (d) includes internal quality checks such as parity or error detection and correction codes; and
  - (e) shall include comprehensive diagnostics to ensure that failures do not go undetected;
- (4) have a battery back-up system that will, at a minimum, allow voting to continue uninterrupted for two hours without external power;
- (5) have an internal audit trail system such that all pre-election, election day and post-election events, including all random ballot images system anomalies, shall be stored, recorded and recovered in an easy to read printed form and be retained within at least three independent memories that do not require any type of external alternating current or direct current battery power for memory retention;
- (6) along with any and all activating and vote recording devices and components, have a unique embedded internal serial number for audit purposes;
- (7) be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities, including any and all entered votes, are directly entered, recorded and retained in each device in multiple memory locations within the device;
- (8) for security purposes, along with each associated activating and recording device and component, employ a unique, electronically implanted election specific internal security code such that the absence of such code prevents substitution of any unauthorized system or related component;
- (9) be designed to accept challenged or fail-safe ballots and allow voters to choose their ballot language directly on the system;
- (10) be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction;



(11) employ scalable technology allowing easy enhancements that meet federal election commission standards and can take advantage of new election technology such as larger touch-screens, optional touch-screen types, expandable memory, modem transmission of election results, ballot activation from automated voter registration systems and internet communication capabilities;

(12) have electronic components mounted on printed circuit boards and subsistence, such as printer, power sources, microprocessor, switch and indicator matrices modular and pluggable;

(13) have a realtime clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;

(14) prevent any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, be able to alert the voter on a message screen if the voter attempts to overvote and inform the voter of any necessary corrective action;

(15) present the entire ballot to the voter in a series of sequential pages that include methods to ensure the voter sees all ballot options on all pages before completing his vote and allow the voter to review all ballot choices before casting his ballot;

(16) have as an integral part of the system a privacy curtain within which the voter casts his vote;

(17) have a color touch-screen that is at least fifteen inches in diagonal measure; and

(18) be able to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position.

C. If the net weight of the system, or aggregate of voting device parts, is over twenty pounds, the system shall 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. The device that is used by the poll worker to activate the system for each individual voter shall be a credit-card size "smart card" type of device. The poll worker shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot. The system must be compatible with the voter registration system, so that the precinct and party information for a specific voter can be transferred to the system automatically and transferred to the smart card without poll-worker data entry. There shall be a manual solution available in the event the smart card activation device, or the smart card reading unit on the machine, fails.

E. Each system shall be able to print an alphanumeric printout of the contest, candidates, position numbers and vote totals when the polls are open so that the poll workers can verify that the counters for each candidate are on zero. At the close of the polls, the system shall be able to print out in the same format the results of the election. These printouts shall contain the system serial number, the public counter total and the protective counter number. The poll worker must be able to request as many copies as necessary by state law. The system shall include an optional feature to allow reports to be sent to a printer, to the screen or to a file.

F. The system central processing unit must be designed so that no executable code can be launched from random access memory. If the operating system is open or widely used, it must be an embedded system.

G. The system shall have a mandatory pre-election testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. This should be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero-results printout prior to these tests and a results printout after the test.

H. The system shall provide an electronic, redundant storage of both the vote totals and the randomized individual ballot images.

I. The system shall allow a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing.

J. The system shall have a programmable memory device that plugs into the system. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log and the randomized ballot images.

K. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail.

L. The system shall have a self-contained, internal back-up battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct the self-contained, internal back-up battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, public counter totals, audit trail ballot images, protective counter totals and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail.

M. The system software shall be able to:

- (1) run in a networked or stand-alone environment;
- (2) support absentee in-person voting;
- (3) collect and keep separate the absentee in-person vote totals by day collected, by machine, by legislative district and by site; and
- (4) collect statistical data such as turnout so that it is available by date and site.

**History:** Laws 2001, ch. 233, § 15.

### ANNOTATIONS

**Effective dates.** - Laws 2001, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

### **1-9-5. Requirement to purchase and use voting systems.**

A. Voting systems shall be used in all precincts in all statewide elections.

B. The county clerk of each county shall provide one voting system in each precinct for use in the general and primary elections when the total number of registered voters in that precinct amounted to fewer than six hundred at the close of registration.

C. At least one additional voting system shall be provided in such precinct for every six hundred registered voters in that precinct.

D. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, which systems may be used in any election for public office. The acquisition of these systems may be in excess of the number provided in this section.

E. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting or electronic vote tabulating system shall have a warranty equal to the warranty required of a new voting or electronic vote tabulating system.

**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.

### ANNOTATIONS

**Cross references.** - For provision as to number of voters a polling place is to accommodate, see 1-3-1 NMSA 1978.

**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".

**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 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.

**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).

**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).

**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 repeals 3-9-7, 1953 Comp., relating to voting machines, use in other elections, and enacts the above 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".

**The 2001 amendment,** effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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. 5643.

**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. 5737.

**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. 5489.

### **1-9-7. Voting systems; acquisition.**

A. Ninety days prior to each primary and general election, the board of county commissioners of each county shall make application to the state board of finance for those additional voting systems required by the Election Code [Chapter 1 NMSA 1978].

B. The additional voting systems shall be of a type approved 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 electronic voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems.

**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.

## ANNOTATIONS

**Cross references.** - For electronic voting system revolving fund, see 1-9-19 NMSA 1978.

**The 1991 amendment,** effective April 2, 1991, substituted "county clerk" for "board of county commissioners" in the final sentence in Subsection B.

**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.

### **1-9-8. 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 upon receipt of the application of the board of county commissioners.

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;

(2) the county will pay therefor the cost of the voting systems, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the voting systems is the responsibility of the county; and

(5) upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.

**History:** 1953 Comp., § 3-9-9, enacted by Laws 1969, ch. 240, § 191; 1972, ch. 28, § 3; 1975, ch. 255, § 117; 2001, ch. 233, § 6.

## ANNOTATIONS

**The 2001 amendment,** effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section; and substituted "the voting systems" for "such machines" in Paragraph B(2).

## **1-9-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1992, ch. 59, § 2 repeals 1-9-9 NMSA 1978, as amended by Laws 1985, ch. 207, § 10, relating to method of payment by counties, effective July 1, 1992. For provisions of former section, see 1991 Replacement Pamphlet.

## **1-9-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 2001, ch. 233, § 16 repeals 1-9-10 NMSA 1978, as amended by Laws 1985, ch. 207, § 11, relating to lever machine disposition, effective June 15, 2001. For provisions of former section, see 1995 Replacement Pamphlet.

## **1-9-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 106, § 12 repeals 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 1985 Replacement Pamphlet.

## **1-9-12. Care and custody of systems; care and custody of keys and seals; responsibility for transportation; repair and programming; charge for such use, transportation or programming.**

A. The county clerk shall have custody of all voting systems, shall keep them in good repair and shall be responsible for their transportation to and from polling places.

B. The county clerk shall have care and custody of and be responsible for the keys and seals for the voting systems and shall be responsible for the programming of the systems. All keys for the voting systems shall be kept in a secure place in the county clerk's office until such time as supplies are available to program or maintain the voting systems. When voting systems are being programmed for any election or maintained after an election, the county clerk or the county clerk's assigned deputy who is knowledgeable in the procedure of programming voting systems shall have custody of the keys and shall assure the security of the keys at all times during the period the voting systems are being programmed or maintained. In any event, all keys shall be returned to the office of the county clerk at the end of each day for safekeeping; providing that if the deputy is programming the voting systems outside of the county seat and it is impractical for the deputy to return the keys at the end of the day, the county clerk may give written authorization in advance to the deputy to retain the keys for as long as is needed to program the voting systems outside of the county seat, and

a copy of the authorization with the deputy named therein shall be kept on file in the county clerk's office subject to public inspection. The county clerk shall submit an affidavit to the secretary of state describing the method to be used in keeping the voting system keys secure. This affidavit shall be submitted to the secretary of state in January of each even-numbered year for the secretary of state's approval or disapproval. The security method approved by the secretary of state shall be the only method of safekeeping the voting system keys until a new affidavit is submitted and approved. Failure of the county clerk to assure the security of voting system keys in his custody shall constitute a neglect to discharge the duties of his office.

C. A reasonable fee may be charged by the county for the use, transportation and programming of the voting systems, 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.

## ANNOTATIONS

**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.

**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.

**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.

**The 2001 amendment,** effective June 15, 2001, substituted "voting systems" for "voting machines" throughout the section.

### **1-9-13. Voting system technicians; approval of contracts.**

A. The secretary of state shall approve all contracts, employment or otherwise, between a county and a voting system technician. Approval shall be based on the following:

- (1) adequacy of the training and expertise of the voting system technician; and
- (2) reasonableness of the compensation for the contracted services, based upon the type of election and the number of systems to be used.



B. Voting system technicians shall be certified by the secretary of state as to their adequacy of training and expertise on electronic voting systems.

C. For purposes of this section, "voting system technician" means any person who programs, clears, inspects and repairs electronic voting systems for compensation.

D. The secretary of state shall adopt rules governing the use, maintenance and repair of electronic voting systems.

**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.

### ANNOTATIONS

**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.

**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.

### **1-9-14. Computer voting devices; authority of the secretary of state to test.**

A. Notwithstanding any other provision of the Election Code [Chapter 1 NMSA 1978], the secretary of state shall provide for the testing and evaluation of internal computers designed for the purpose of recording and tabulating votes within polling places in New Mexico. Any person who has an internal computer which 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 his equipment examined and tested. At the time application is made, 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 computer voting system. 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 an internal computer for recording and tabulating votes 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 precincts 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.

B. 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 submit that

report for consideration by a committee consisting of the secretary of state, the state chief information officer and a county clerk who is appointed by and serves at the pleasure of the governor and who is appointed with regard to political party affiliation so that no more than two members of the committee are from one political party. The committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code [Chapter 1 NMSA 1978]. Such report shall be a public record.

C. If the committee recommends that the internal computer for recording and tabulating votes is suitable for use in polling places for the conduct of elections in New Mexico, such equipment shall be deemed approved for use in elections in this state no later than January 1 of the succeeding year.

D. In the event the committee approves the use of internal computers for use in polling places for the conduct of elections in New Mexico, then the secretary of state shall prescribe by rule promulgated under the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] specifications for internal computers designed for the purpose of providing for a system of recording and tabulating votes within polling places. The prescribed specifications shall have as their purpose securing the secrecy of the ballot, protecting against fraud in the voting process, preserving in all respects the purity of elections, facilitating voting by the voters of this state and carrying out the provisions of the Election Code [Chapter 1 NMSA 1978] with respect to the administration of the conduct of elections in New Mexico.

**History:** Laws 1983, ch. 226, § 1; 1989, ch. 297, § 1; 1991, ch. 106, § 7; 2001, ch. 233, § 9.

## ANNOTATIONS

**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".

**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.

**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. Electronic voting systems; recording and tabulating voting systems; standards.**

A. Electronic recording and tabulating voting systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico.

B. The electronic recording and tabulating voting systems shall meet the following standards:

(1) the system shall be an electronic computer-controlled voting system which provides for direct electronic recording and tabulating of votes cast;

(2) the operating system software, firmware, of the system shall be stored in nonvolatile memory and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(5) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(6) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(7) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(8) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(9) the system shall have an operating and storage humidity range of thirty percent to eighty percent noncondensing;

(10) the system shall be able to accept line voltage of 115 VAC +- 15 percent, 60 HZ;

(11) the system shall be able to record and document the total time polls are open at a precinct location;

(12) the system shall prevent any voter from selecting more than the allowable number of candidates for any office and shall preclude overvoting;

(13) the system shall be capable of operating continuously for a minimum time period of sixteen hours without external power (115 VAC);

(14) the tabulation of votes on the system shall be stored, ballot by ballot, in three or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting system before it can continue to be used in the election;

(15) the system shall contain the entire ballot which shall be placed on the face of the machine and shall be visible to the voter on a single page;

(16) the system shall have a privacy booth in which the voter casts his vote, and the privacy booth shall be an integral part of the system; and

(17) the system shall be designed to meet the needs of physically disabled voters with or without adjustment of the unit by poll workers.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable.

**History:** 1953 Comp., § 1-9-15, enacted by Laws 1985, ch. 207, § 14; 1989, ch. 297, § 2; 1991, ch. 106, § 8; 2001, ch. 233, § 10.

## ANNOTATIONS

**The 1991 amendment**, effective April 2, 1991, added Subsection C.

**The 2001 amendment**, effective June 15, 2001, substituted "voting systems" for "voting machines" and "system" for "machine" throughout the section; in Paragraph B(2), inserted "system" following "operating" and "firmware" following "software", and deleted "firmware" following "nonvolatile memory"; and in Paragraph B(4), deleted "by a common carrier such as telephone networks" from the end of the paragraph.

### **1-9-16. Electronic voting systems; vote tabulating systems; standards.**

A. Electronic vote tabulating systems, as tested and approved by the secretary of state pursuant to the provisions of Section 1-9-14 NMSA 1978, may be used in any election for public office in New Mexico for the purpose of tabulating ballots.

B. The electronic vote tabulating systems shall meet the following standards:

(1) the machine shall be an electronic computer-controlled voting system which provides for the direct electronic tabulation of votes cast;

(2) the operating software of the vote tabulating system shall be stored in a nonvolatile memory (firmware) and shall include internal quality checks such as purity or error detection and correction codes. The firmware shall include comprehensive diagnostics to ensure that failures do not go undetected;

(3) the system shall have a battery back-up that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures;

(4) the system shall provide alphanumeric printouts of the vote totals by legislative district at the closing of the polls;

(5) the system shall have, as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;

(6) subsistence, such as printer, power sources, microprocessor, switch and indicator matrices, shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards;

(7) the system shall be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

(8) the system shall be able to operate in a temperature range of fifty degrees Fahrenheit to ninety degrees Fahrenheit;

(9) the system shall have a temperature range for storage of zero degrees Fahrenheit to one hundred twenty degrees Fahrenheit;

(10) the system shall have an operating and storage humidity of thirty percent to eighty percent noncondensing;

(11) the system shall accept a line voltage of 115 VAC +/- 15 percent, 60 HZ;

(12) the system memory pack shall be able to accept over one thousand five hundred voting positions and tabulate over sixty-five thousand votes for each position;

(13) the system shall accept a ballot inserted in any orientation and one which is a minimum six inches wide and a maximum twenty-four inches long, in dual columns and printed on both sides. The ballot should be able to hold a maximum of five hundred twenty candidate positions;

(14) the system shall recognize all errors and be able to reject or return the errant ballot. The tabulator shall automatically be able to detect an overvoted ballot;

(15) the system shall contain an RS-232 data communications capability to transmit totals;

(16) the system shall contain a public display counter to record the number of ballots processed; and

(17) the system should be programmable with control cards.

C. In determining compliance with the standards set forth in Subsection B of this section, the qualification test report made pursuant to the performance and test standards of the federal election commission shall be considered in so far as it is applicable.

**History:** 1978 Comp., § 1-9-16, enacted by Laws 1985, ch. 207, § 15; 1989, ch. 297, § 3; 1991, ch. 106, § 9; 2001, ch. 233, § 11.

## ANNOTATIONS

**The 1991 amendment**, effective April 2, 1991, added Subsection C.

**The 2001 amendment**, effective June 15, 2001, substituted "tabulating systems" for "tabulating machines" and "system" for "machine" throughout the section; deleted "by common carriers such as telephone networks" from the end of Paragraph B(5); inserted "a minimum" and "a maximum" in Paragraph B(13); and deleted "over regular voice-grade telephone lines" from the end of Paragraph B(15).

### **1-9-17. Electronic voting systems; 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 electronic voting systems and the necessary support equipment upon receipt of the application of the board of county commissioners.

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 electronic voting systems and the necessary support equipment;

(2) the county will pay for the cost of such systems and support equipment, including reimbursement for costs of transportation;

(3) the term of the lease-purchase contract shall not exceed twenty years;

(4) the care, custody and maintenance of the systems and support equipment 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.

### **ANNOTATIONS**

**Cross references.** - For the state board of finance, see 6-1-1 NMSA 1978.

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

**The 2001 amendment,** effective June 15, 2001, substituted "systems" for "machines" throughout the section.

### **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. Electronic voting system revolving fund.**

The "electronic voting system revolving fund" is created. The electronic voting system revolving fund may be used to finance, by contract, the purchase of electronic voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978. The electronic voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration. If at the end of the fiscal year the electronic voting system revolving fund exceeds four million dollars (\$4,000,000), the amount in excess of four million dollars (\$4,000,000) shall revert to the general fund.

**History:** 1978 Comp., § 1-9-19, enacted by Laws 1985, ch. 207, § 18; 2001, ch. 233, § 14.

### **ANNOTATIONS**

**Cross references.** - For the general fund, see 6-4-2 NMSA 1978.

**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.

**Temporary provisions.** - Laws 1992, ch. 59, § 1, effective July 1, 1992, provides that all cash balances in the lever voting machine revolving fund, provided for in 1-9-9 NMSA 1978, are transferred to the electronic voting machine revolving fund, provided for in 1-9-19 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 70, effective March 9, 1994, appropriates \$700,000 from the general fund to the electronic voting machine fund for expenditure in the eighty-second and eighty-third fiscal years to carry out the provisions of the fund. Any unexpended or unencumbered balance of this appropriation shall not revert to the general fund, except as provided in 1-9-19 NMSA 1978.

## **ARTICLE 10 BALLOTS AND BALLOT LABELS**

### **1-10-1. Ballot.**

As used in the Election Code [this chapter]:



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, ballot labels, ballot cards, ballot sheets and emergency paper ballots;

B. "ballot label" means that portion of cardboard, paper or other material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking, a statement of the proposed constitutional amendment or other question or proposition to be voted upon;

C. "emergency paper ballot" means the paper ballot used in the circumstances covered under Section 1-12-43 NMSA 1978;

D. "ballot card" means a card upon which votes may be recorded by use of a pen or pencil for tabulation in an electronic vote tabulating machine; and

E. "ballot sheet" means the sheet used on an electronic vote recording and tabulating machine containing the offices, candidates and questions to be voted on.

**History:** 1953 Comp., § 3-10-11.1, enacted by Laws 1977, ch. 222, § 24; 1985, ch. 207, § 19.

## **1-10-2. Ballots; duty to provide.**

The county clerk shall prepare and supply the ballots used in elections conducted under the Election Code [this chapter]. Ballots other than those prepared by the county clerk shall not be used in such elections.

**History:** 1953 Comp., § 3-10-11.2, enacted by Laws 1977, ch. 222, § 25.

### **1-10-2.1. Ballots; equipment.**

The county clerk shall procure ballot-creating equipment when direct recording electronic machines are used or contract with a vendor who has those capabilities.

**History:** 1978 Comp., § 1-10-2.1, enacted by Laws 1991, ch. 105, § 16.

## **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 forty-nine days before the primary election, the county clerk shall group all candidates for each party and prepare in writing a separate ballot for each party and certify the candidates for each ballot position to the printer and have the ballots for each party printed.

B. Not less than fifty-three days before the general election, the county clerk shall prepare in writing the ballot containing the name of each candidate which has been certified and filed as the nominee of his 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 the certification shall be transmitted to the secretary of state.

C. The county clerk shall furnish to the county chairman of a major political party upon his request 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.

#### **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.

#### **1-10-5. Ballots; printing.**

Ballot labels shall be printed and in the hands of the county clerk at least thirty days before the election.

**History:** 1953 Comp., § 3-10-11.5, enacted by Laws 1977, ch. 222, § 28.

#### **ANNOTATIONS**

**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. 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 is set out as amended by Laws 1993, ch. 316, § 52. See 12-1-8 NMSA 1978.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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).

**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).

### **1-10-7.1. Ballots; removal of name of deceased candidate.**

The name of a candidate deceased after the filing of his declaration of candidacy and nominating petitions, after the designation by a pre-primary convention or after his nomination at a primary election, but prior to the printing of the primary or general election ballot, shall be removed from the primary or general election ballot.

**History:** Laws 1997, ch. 93, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 93 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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;
- O. county surveyor, if applicable; and
- P. 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.

## ANNOTATIONS

**Cross references.** - For order of candidates on ballot for primary, see 1-8-43 NMSA 1978.

**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 voting machines, emergency paper ballots and absentee 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. The order of preference of major political parties for purposes of this section shall be: first, the top row with the offices proceeding from left to right across the lever voting machine or paper ballot; second, the second row with the offices proceeding from left to right across the machine or paper ballot; and thereafter, consecutively down each row in the same manner until all major parties and their candidates are positioned on the ballot.

C. The order of preference of minor political parties for purposes of this section in the positions below the major parties on the machine or ballot shall be: first, the top row with the offices proceeding from left to right across the machine or paper ballot; second, the second row with the offices proceeding from left to right across the machine or paper ballot; and thereafter, consecutively down each row in the same manner until all minor parties and their candidates are positioned on the ballot.

D. Where lever voting machines are used, the sample ballot posted in the polling place shall reflect the actual positioning of parties on the voting machine in that precinct. The secretary of state may require that sample ballots distributed to each polling place reflect the actual positioning of parties on the voting machines used in that precinct.

E. When electronic vote recording and tabulating machines or electronic vote tabulating machines are used, the offices and candidates shall be printed on the ballot sheet or ballot card in a vertical position with the order of preference being from top to bottom.

F. When emergency paper ballots and absentee 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 the voting machines in that precinct.

G. 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.

### 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 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.**

A. After the official ballot labels are arranged for voting purposes, the county clerk shall provide sample ballots which shall show the entire front of the voting machine as it will appear for voting purposes on election day.

B. 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.

## **ANNOTATIONS**

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

## **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, repeals 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 1991 Replacement Pamphlet. 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. 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 for each of the offices to be filled;
- E. list the declared write-in candidate's name and party affiliation;
- F. list the names of all precinct board members and the precinct to which they are appointed; and
- G. give the address or location of the polling place in each precinct where the election is to be held.

**History:** 1953 Comp., § 3-11-2, enacted by Laws 1969, ch. 240, § 212; 1991, ch. 105, § 19.

### **ANNOTATIONS**

**Cross references.** - For contents of notice when precincts have been consolidated, see 1-3-4 NMSA 1978.

**The 1991 amendment,** effective April 2, 1991, added Subsection E and redesignated former Subsections E and F as Subsections F and G.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**Provisions of section apply** to primary elections. 1941-42 Op. Att'y Gen. No. 4124.

**Provisions do not apply** to municipal board of education elections or to city elections. 1943-44 Op. Att'y Gen. No. 4220.

**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. 5244.

**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.

**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.

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965, referred to in Subsection F, is compiled as 42 U.S.C. § 1973 et seq.

**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. 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.**

Thirty days before the election, the county clerk may begin to prepare, inspect and seal lever voting machines and electronic voting machines which are to be used in the election, and such preparation, inspection and sealing shall continue until all machines are prepared, inspected and sealed.

**History:** 1953 Comp., § 3-11-6, enacted by Laws 1969, ch. 240, § 215; 1981, ch. 137, § 1; 1985, ch. 207, § 24.

### **ANNOTATIONS**

**Cross references.** - For manner of preparing voting machine, see 1-11-6 NMSA 1978.

**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. 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.**

Thirty days prior to an election the county clerk shall:

A. certify to the secretary of state and all county party chairmen the type and serial number of each voting machine intended to be used in each precinct, by precinct number; and

B. prepare, in the presence of those persons entitled to be present, the lever voting machines and electronic voting machines for the election as follows:

(1) all public, candidate and question counters shall be set at zero;

(2) assisted by watchers, 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.

**History:** 1953 Comp., § 3-11-7, enacted by Laws 1969, ch. 240, § 216; 1985, ch. 207, § 25; 1989, ch. 392, § 21.

### **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.

### **1-11-6.1. Electronic voting machines; testing.**

A. The county clerk shall insure that all electronic voting machine programs are tested not later than ten days prior to the election. The tests shall be conducted by the county clerk in the presence of the county chairman of each major political party and any interested candidate or representative of the candidate. The county clerk shall seal and retain the logic and accuracy test printout, known as the internal audit trail, for forty-five days after the election. The county clerk shall also seal and retain the test ballots used in the marksense voting machines for a period of forty-five days after the election.

B. All programming of vote tabulating machines shall be performed under the supervision of the secretary of state and the county clerk. The machines shall be programmed so that votes will be counted in accordance with the specifications for electronic voting machines adopted by the secretary of state.

C. After testing, all counters shall be set at zero, and the machine shall be immediately sealed with a numbered metal or plastic seal so as to prevent operation of the machine or its registering counters without breaking the seal.

D. On the certificate for that machine there shall be recorded:

(1) the number of the seal; and

(2) the reading shown on the protective counter.

**History:** 1978 Comp., § 1-11-6.1, enacted by Laws 1985, ch. 207, § 26; 1991, ch. 105, § 21.

#### **ANNOTATIONS**

**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 lever voting machine and electronic voting machine has been prepared for the election, the county clerk shall prepare a written certificate which shall be filed in his 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 resettable registering counters set at zero and whether or not the machine has been tested by voting on each registering counter to prove the counter is in perfect condition. The certificate shall also show the number of the seal which has sealed the machine and the number registered on the protective counter.

**History:** 1953 Comp., § 3-11-8, enacted by Laws 1969, ch. 240, § 217; 1981, ch. 137, § 2; 1985, ch. 207, § 27.

#### **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.

### **1-11-8. Voting machines; notice of sealing.**

A. Before preparing any type of voting machine for an election, the county clerk shall send written notice to the county chairman 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 and candidates may be present at the preparation, inspection and sealing of the voting machines to insure compliance with the Election Code [this chapter].

**History:** 1953 Comp., § 3-11-9, enacted by Laws 1969, ch. 240, § 218; 1985, ch. 207, § 28.

### **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.

### **1-11-9. Voting machines; sealing of keys.**

A. When all types of voting machines are locked and sealed, the key to each voting machine shall be enclosed in a sealed envelope on which shall be written:

- (1) the number of the precinct to which the machine is assigned;
- (2) the number of that voting machine;
- (3) the number of the seal on the voting machine;
- (4) the number registered on the protective counter; and
- (5) the signature of the county clerk and the signatures of two watchers of different parties or opposing interests, if there be such, which shall be written across the seal of the envelope.

B. The envelope containing the key shall be opened in the presence of all members of the precinct board, and they shall verify that the seal on the envelope has not been previously opened and that the numbers on the envelope correspond with the numbers on the machine.

C. If any number does not match the corresponding number on the machine:

- (1) the presiding judge shall notify the county clerk; and

(2) no further action shall be taken regarding that machine until the county clerk or his authorized representative arrives at the polling place and has inspected, tested and certified that the voting machine is in proper order.

**History:** 1953 Comp., § 3-11-10, enacted by Laws 1969, ch. 240, § 219; 1985, ch. 207, § 29.

## **ANNOTATIONS**

**Cross references.** - For unlawful opening of voting machine, see 1-20-5 NMSA 1978.

For unlawful possession of keys, see 1-20-6 NMSA 1978.

### **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. Certifying county register.**



A. At least twenty days before a statewide election, general election or primary election, the county clerk shall certify the county voter file as representing the county register.

B. If the original certificate of registration is missing, the county clerk shall make a replacement copy from the information contained in the county voter file. The replacement certificate shall be stamped "REPLACEMENT COPY" and shall be inserted in the appropriate file. The county clerk shall make a list of all replacement copies. The list shall include the name and address of the voter. The county clerk shall certify the list and file it with the district court.

C. The replacement copy shall have the same validity as the certificate of registration that it replaces.

**History:** 1953 Comp., § 3-11-13, enacted by Laws 1969, ch. 240, § 222; 1985, ch. 207, § 30; 1991, ch. 105, § 22; 1993, ch. 314, § 53; 1993, ch. 316, § 53.

### ANNOTATIONS

**The 1991 amendment**, effective April 2, 1991, substituted "Certifying county register" for "Comparison of affidavits" in the section heading; rewrote Subsection A which read "At least ten days before a statewide special election, general election or primary election, the county clerk shall compare each original affidavit of registration with the county voter file"; inserted "affidavit" following "original" in the first sentence in Subsection B; and made a minor stylistic change in Subsection C.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 53 and Laws 1993, ch. 316, § 53, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate of registration" and "certificate" for "affidavit" in Subsection B, and "certificate" for "affidavit" in Subsection C. The section is set out as amended by Laws 1993, ch. 316, § 53. See 12-1-8 NMSA 1978.

### 1-11-13. Voters alphabetical index.

Not more than twenty nor less than ten days before a general or primary election, the county clerk shall send an alphabetical index, by precinct, of all voters, their party affiliation and their addresses to the secretary of state and to the county chairman of each of the major political parties. Each alphabetical index shall be certified by the county clerk as being an accurate listing of all voters in the county by precinct, party and address.

**History:** 1953 Comp., § 3-11-14, enacted by Laws 1969, ch. 240, § 223.

### ANNOTATIONS

**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.

**History:** 1953 Comp., § 3-11-15, enacted by Laws 1969, ch. 240, § 224; 1981, ch. 137, § 3.

#### **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.

### **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 repeals 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 1985 Replacement Pamphlet.

### **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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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. 6532.

**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).

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).

**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. Election day work shifts; 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, at least one election 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 he submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978.

**History:** Laws 1999, ch. 236, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **1-12-3. Conduct of election; precinct board duties.**

The secretary of state shall prescribe the duties of the precinct board. Copies of such duties shall be furnished 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.

#### **ANNOTATIONS**

**Cross references.** - For secretary of state providing instructions for precinct board, see 1-2-4 NMSA 1978.

**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.

#### **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 [this chapter].

**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. No person shall vote in any primary, general or statewide special election unless he is a voter of the precinct 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. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No person at any primary election shall 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.

## 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 1991 amendment**, effective April 2, 1991, added "at the time the governor issues the primary election proclamation" at the end of Subsection C.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 54 and Laws 1993, ch. 316, § 54, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" throughout the section. The section is set out as amended by Laws 1993, ch. 316, § 54. See 12-1-8 NMSA 1978.

**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.

**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.

## **1-12-8. Conduct of election; voter's copy or certificate voting.**

A. Notwithstanding the provisions of Section 1-12-7 NMSA 1978, a person shall be permitted to vote even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:



(1) his residence is within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the list of persons submitting absentee ballots;

(3) he presents his voter identification card that appears on its face to be valid or he presents a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's duplicate certificate of registration is on file at the county clerk's office and that such voter has not received an absentee ballot nor has he been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

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

B. An election judge shall insert the voter's ballot number or voter number on the public counter on the voter's copy of the certificate of registration or certificate of eligibility and on the executed statement. The voter's copy of the certificate of registration or certificate of eligibility shall be retained by the precinct board and the voter's copy of his certificate of registration or certificate of eligibility, along with the executed statement, shall be returned with the election returns to the county clerk.

C. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [30-1-1 NMSA 1978] of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

D. To be valid, a voter's copy of the certificate of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

E. Within thirty days after the election, the county clerk shall examine each executed statement and investigate the truth of the statements made therein. The county clerk shall also determine the reason why the original certificate of registration of the voter was not in the county register or the signature roster sent to the precinct board and shall take actions to avoid similar circumstances requiring the use of the voter's copy of the certificate of registration or certificate of eligibility by voters in future elections.

**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.

## **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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 55 and Laws 1993, ch. 316, § 55, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" and "certificate of registration" for "affidavit" throughout the section, inserted "of eligibility" throughout the section, and made several minor stylistic changes. The section is set out as amended by Laws 1993, ch. 316, § 55. See 12-1-8 NMSA 1978.

**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.

## **1-12-9. 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.

### **ANNOTATIONS**

**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.

### **1-12-9.1. 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.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1995, ch. 198, § 18 makes this act effective immediately. Approved April 6, 1995.

### **1-12-10. Conduct of election; voter's name, address, signature.**

When a voter presents himself at the polls to vote, he shall announce his name and address in an audible tone of voice. When an election judge finds the voter's name in the signature roster, he shall in like manner repeat the name of the voter. The voter shall then sign his name or make his 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 [this chapter].

**History:** 1953 Comp., § 3-12-13, enacted by Laws 1969, ch. 240, § 249; 1987, ch. 249, § 27; 1991, ch. 105, § 26.

### **ANNOTATIONS**

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

**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.

### **1-12-11. Conduct of election; entries by precinct board.**

If no challenge is interposed, an election judge shall write or stamp in the space provided therefor on the signature roster the number of the paper ballot cast by the voter or the vote number shown on the public counter of the voting machine.

**History:** 1953 Comp., § 3-12-14, enacted by Laws 1969, ch. 240, § 250; 1985, ch. 207, § 33.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 315.

29 C.J.S. Elections § 171.

### **1-12-12. Conduct of election; eligibility for assistance.**

A voter may request assistance in voting only if:

A. he is blind;

B. he is physically disabled;

C. he is unable to read or write; or

D. he is a member of a language minority who has an inability to read well enough to exercise the elective franchise.

**History:** 1953 Comp., § 3-12-29, enacted by Laws 1969, ch. 240, § 265; 1977, ch. 124, § 8.

## ANNOTATIONS

**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).

**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).

**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 his paper ballot or recording his vote by voting machine, the voter shall announce this fact in an audible tone before receiving his paper ballot or before entering the voting machine.

B. The voter's request for assistance shall be noted by his 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 his paper ballot or recording his vote 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.

### ANNOTATIONS

**Cross references.** - For perjury, see 30-25-1 NMSA 1978.

**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. 6367 (opinion rendered under former law).

**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).

### 1-12-14. Repealed.

### ANNOTATIONS

**Repeals.** - Laws 1989, ch. 259, § 3 repeals 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. For provisions of former section, see 1985 Replacement Pamphlet.

### 1-12-15. Conduct of election; persons who may assist voter.

In any primary, general or statewide special election, if a voter who has requested assistance in marking his 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, he may be accompanied into the voting machine only by a person of his 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.

**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.

## ANNOTATIONS

**Cross references.** - For the election translator and oral assistance for language minority voters, see 1-2-19 NMSA 1978.

**Compiler's notes.** - Several of the following notes are from opinions rendered under former Election Code provisions.

**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. 6367.

**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.

**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 accompanying the voter into the voting booth or voting machine may assist the voter in marking and folding his paper ballot or recording his vote on the voting machine.

**History:** 1953 Comp., § 3-12-32, enacted by Laws 1969, ch. 240, § 268.

## **1-12-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1989, ch. 259, § 3 repeals 1-12-17 NMSA 1978, as amended by Laws 1987, ch. 249, § 30, relating to return of affidavit, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

## **1-12-18. Conduct of election; disclosure of vote.**

A member of the precinct board 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.

### **ANNOTATIONS**

**Cross references.** - For secrecy of ballot to be preserved, see N.M. Const., art. VII, § 1.

**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, repeals 1-12-19 NMSA 1978, relating to write-in votes at general elections, effective June 19, 1981.

### **1-12-19.1. General elections; write-in candidates.**

A. A person desiring to be a write-in candidate in a general election, a special election for United States representative or a statewide special election shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election.

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 he is qualified to be a candidate for and to hold the office for which he 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 [this chapter], including the obligation to report under the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], except that he shall not be entitled to have his name printed on the ballot.

D. The secretary of state shall, not less than ten days before the general election, 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.

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 or entered upon the keyboard on the voting machine or on the proper line provided on a marksense ballot, absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

G. No unopposed write-in candidate shall have his election certified unless he receives at least the number of write-in votes as he would need signatures on a nominating petition pursuant to the requirements in Section 1-8-33 NMSA 1978.

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.

## ANNOTATIONS

**Cross references.** - For write-in candidates in primary election, see 1-8-36.1 NMSA 1978.

**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.



**Procedures for write-in ballots in conservancy district elections.** - See *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 presenting himself to vote is not registered;
- B. the person presenting himself to vote is listed on the purge list placed with the signature rosters or is listed among those persons in the precinct from whom an absentee ballot was received;
- C. the person presenting himself to vote is improperly registered because he is not a qualified elector;
- D. in the case of a primary election, the person presenting himself to vote is not affiliated with a political party represented on the ballot; or
- E. in the case of an absentee ballot, the official outer envelope of the absentee voter has been opened prior to the counting of the ballots.

**History:** 1953 Comp., § 3-12-37, enacted by Laws 1969, ch. 240, § 273; 1987, ch. 249, § 31.

### **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.

**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 election clerks shall enter the word "CHALLENGED" under the notation headings in the signature rosters.

**History:** 1953 Comp., § 3-12-38, enacted by Laws 1969, ch. 240, § 274; 1987, ch. 249, § 32.

### **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 nevertheless be furnished a paper ballot, regardless of whether or not voting machines are being used in the precinct, and he shall be allowed to mark it. The paper ballot shall then be returned to the presiding judge who shall announce the voter's name in an audible tone and in the voter's presence and place the challenged ballot in an envelope marked "Rejected". Then this envelope shall be sealed, and the voter's name shall be written on the envelope. The envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted. The election clerks shall enter such voter's name in the signature roster to be sent to the secretary of state, and the voter shall sign his name in the other signature roster. The word "Affirmed" shall be written opposite such voter's name under the challenge notation in both signature rosters together with the number of the ballot so furnished.

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.

## ANNOTATIONS

**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.

**Similar section inadvertently declared unconstitutional.** - Former section requiring that registered voter who was rejected be given a ballot and be allowed to mark it whereupon it would be placed in an envelope which would be marked "rejected" and placed in ballot box was inadvertently declared unconstitutional as part of Absent Voters' Law in *Baca v. Ortiz*, 40 N.M. 435, 61 P.2d 320 (1936).

**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 enters the voting machine, a member of the precinct board shall, so far as possible, instruct him on how to operate the voting machine, illustrate its operation on the model and call his attention to the posted sample ballot. If any voter, after entering the voting machine and before drawing its curtain, asks for further information regarding the machine's operation, the two election judges shall give him the necessary information and retire before the curtain is drawn.

**History:** 1953 Comp., § 3-12-41, enacted by Laws 1969, ch. 240, § 277; 1981, ch. 149, § 4.

## ANNOTATIONS

**Cross references.** - For assistance of voter, see 1-12-12 to 1-12-18 NMSA 1978.

**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. Conduct of election; voting machines; inspection of face after vote.**

The member of the precinct board attending the voting machine shall inspect the face of the machine after each voter has recorded his vote to see that the ballot labels are in their proper places.

**History:** 1953 Comp., § 3-12-42, enacted by Laws 1969, ch. 240, § 278.

## **1-12-25. Conduct of election; voting machines; entry into machine.**

After a voter has announced his name, had his registration confirmed, signed or marked the signature roster and has had no challenge affirmed against his casting a ballot, he may enter the voting machine. No more than one voter shall be permitted in the voting machine at one time unless the voter is being assisted.

**History:** 1953 Comp., § 3-12-43, enacted by Laws 1969, ch. 240, § 279; 1987, ch. 249, § 34; 1991, ch. 105, § 29.

### **ANNOTATIONS**

**The 1991 amendment**, effective April 2, 1991, in the first sentence, deleted "and address" following "name" and inserted "or marked" following "signed" and substituted the second sentence for two sentences which read "Unless an affidavit for assistance has been executed no more than one voter shall be permitted in the voting machine at one time. No voter shall be permitted to keep the voting machine curtain closed longer than three and one-half minutes."

### **1-12-25.1. Procedures for voting on lever, electronic and marksense voting machines.**

A. A voter voting on a lever type machine shall:

- (1) enter the machine and push the red handle to the left to close the curtain;
- (2) set the pointer directly under the candidate's name or question on which he desires to vote; and
- (3) make all selections and pull the red handle to the right to open the curtain and record his vote.

B. A voter voting on a direct recording electronic machine shall:

- (1) enter the machine;

(2) press the square to the right of the candidate's name or question on which he desires to vote; and

(3) make all selections and press the vote button in the lower right hand corner of the voting machine to record his vote.

C. A voter voting on a marksense machine shall:

(1) receive a ballot issued by the precinct board;

(2) take the ballot to a voting booth and, with the pencil provided, mark it by completing the arrow to the right of the candidate's name or question on which he desires to vote; and

(3) make all selections and feed the ballot into the machine to record his vote.

**History:** 1978 Comp., § 1-12-25.1, enacted by Laws 1991, ch. 105, § 30.

### **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. 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.

### **1-12-28. 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. 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.

### **1-12-30. Conduct of election; disposition of poll book, signature roster 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 check list 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 direct recording electronic cartridge for electronic and marksense machines shall be returned to the county clerk. The signature roster, the machine printed returns and the direct recording electronic cartridge for electronic and marksense machines 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 three years after the election to which they apply.

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.

## ANNOTATIONS

**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.

### **1-12-31. 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 box:

- (1) one ballot box key in an envelope addressed to the county clerk;
- (2) one signature roster;
- (3) one tally sheet;
- (4) the registration binder;
- (5) all unused election supplies not destroyed pursuant to the Election Code [this chapter]; and
- (6) a machine cartridge for any electronic or marksense machine.

B. In the event emergency paper ballots have been voted, 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.

#### **ANNOTATIONS**

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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 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).

**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).

**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).

**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).

### **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. 4154 (opinion rendered under former law).

### **1-12-34. Conduct of election; copies of election return certificates.**

Upon completion of the certificate of returns, the presiding judge shall deliver all returns to the county clerk on election night with the exception of the one legible copy from each voting machine posted on the outside of the entrance door to the polling place.

**History:** 1953 Comp., § 3-12-58, enacted by Laws 1969, ch. 240, § 294; 1991, ch. 105, § 33.

#### **ANNOTATIONS**

**The 1991 amendment**, effective April 2, 1991, rewrote this section which read "Upon completion of the certificate of returns, the presiding judge shall deliver upon demand, one copy thereof to a representative of each political party present, bearing the precinct board signatures, the same as on the original. The presiding judge shall also post one signed copy of the certificate in the polling place. Certified copies of the certificate may be taken and used as evidence in all cases the same as the original certificate. The secretary of state shall supply printed forms of such additional certificates."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 400.

29 C.J.S. Elections § 237(4).

### **1-12-35. Conduct of election; voting machines; closing polls; locking machine.**

As soon as the last voter has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked and sealed, giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

**History:** 1953 Comp., § 3-12-59, enacted by Laws 1969, ch. 240, § 295; 1981, ch. 149, § 6.

#### **ANNOTATIONS**

**Cross references.** - For unlawful opening of voting machine, see 1-20-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 319 et seq.

29 C.J.S. Elections § 198.

### **1-12-36. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 149, § 10, repeals 1-12-36 NMSA 1978, relating to the procedure for opening voting machines, effective June 19, 1981.

### **1-12-37. Conduct of election; voting machines; verification of returns.**

A. 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.

B. If the machine-printed returns are not legible, the precinct officials shall call the county clerk in order to have the center counter compartment door opened and shall proceed to canvass the results from the counters of the machine.

**History:** 1953 Comp., § 3-12-61.1, enacted by Laws 1973, ch. 358, § 2; 1977, ch. 222, § 43; 1981, ch. 149, § 7.

### **1-12-37.1. Ballots; remedy for use of incorrect ballots.**

A. As used in this section, "incorrect ballot" means an election ballot that fails to list the correct candidate for an office.

B. If an incorrect ballot is discovered after eligible voters have used the incorrect ballot to cast their votes, the precinct board shall:

(1) lock and seal the voting machine on which the incorrect ballot appears to prevent further voting on that machine, at which time that machine shall be considered disabled;

(2) preserve a record of the voters who voted using the incorrect ballot by marking the vote number shown on the public counter of the voting machine on both the copy of the voter list marked for the secretary of state and the signature roster;

(3) attach a note to the voter list marked for the secretary of state and the signature roster giving the number of the last voter who voted using the incorrect ballot; and

(4) if necessary, use emergency paper ballots pursuant to Section 1-12-43 NMSA 1978.

C. The precinct board shall notify the county clerk and the secretary of state of the incorrect ballot and of the precinct board's compliance with the provisions of this section no later than one hour after the polls close.

D. The votes recorded on the voting machine that was locked and sealed pursuant to Subsection B of this section shall be tallied with the votes from valid ballots from the precinct, except that the votes for incorrect candidates shall not be tallied. Written notice of this procedure and a statement of the number of voters who voted using the incorrect ballot shall be sent to the secretary of state and the county clerk after the signature roster is properly certified.

E. If a candidate contests the election results and the court finds that the number of eligible voters who relied on incorrect ballots is great enough to affect the outcome of that candidate's race, the court may order the county clerk to send ballots for that candidate's race to those voters who voted using an incorrect ballot.

F. The ballots prescribed in Subsection E of this section shall list the names of the candidates and office for the race in question, be in a form substantially similar to absentee ballots as prescribed by the secretary of state and:

- (1) indicate the number of voters that are eligible to vote in the court-ordered vote;
- (2) give the reason the voter is being asked to vote;
- (3) indicate that the voter must return the ballot within fourteen days of receiving it;
- (4) be mailed to the voter by certified mail, return receipt requested; and
- (5) be mailed with a prepaid return envelope addressed to the county clerk of the county within which the voter's precinct lies.

G. Returned ballots shall be opened, counted and tallied by the county clerk in the presence of the district court judge or his representative and the results added to the candidates' respective vote totals and reported to the court and the secretary of state. Ballots not received by the county clerk within eighteen days of the county clerk's mailing shall not be counted.

**History:** Laws 2002, ch. 51, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 51 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **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. Conduct of election; voting machine; duration of locking and sealing.**

A. On the voting machine, the machine return sheet is the official vote tally for that precinct.

B. If in the district court's opinion a contest is likely to develop, it may order a voting machine to remain locked and sealed for such time it deems necessary, which period of time shall not interfere with or prohibit the use of the machine at a subsequent election.

C. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction, the state legislature or the governing body of a local government calling the election. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the person having broken the seal.

**History:** 1953 Comp., § 3-12-64, enacted by Laws 1969, ch. 240, § 300; 1973, ch. 358, § 4; 1977, ch. 222, § 44; 1981, ch. 149, § 8.

#### **ANNOTATIONS**

**Cross references.** - For locking of machine, see 1-12-35 and 1-12-39 NMSA 1978.

For penalty for unlawful opening of machine, see 1-20-5 NMSA 1978.

### **1-12-41. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 153, § 2, repeals 1-12-41 NMSA 1978, 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".

**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.

**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).

### **1-12-43. Emergency situations; emergency paper ballots; when used.**

A. If any voting machine becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of his choice and have such

vote recorded by the machine, it shall be repaired, if possible, or another voting machine shall be promptly substituted.

B. The board of county commissioners shall appropriate funds for servicing, repairing and substituting voting machines that become disabled.

C. If a disabled voting machine cannot be repaired in a reasonable length of time, and if there are no other voting machines available for substitution, the presiding judge shall order emergency paper ballots to be substituted and used.

D. The county clerk shall provide additional emergency paper ballots if needed and when requested by the precinct board.

**History:** 1953 Comp., § 3-12-77, enacted by Laws 1977, ch. 222, § 46.

### **ANNOTATIONS**

**Cross references.** - For care and custody of voting machines, see 1-9-12 NMSA 1978.

**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. 5920 (opinion rendered under former law).

### **1-12-44. Emergency situations; emergency paper ballots; general requirements.**

Emergency paper ballots used in the primary and general elections shall:

A. be numbered consecutively for each precinct, beginning with number one. The number shall be printed in the upper right-hand corner of the ballot with a diagonal perforated line so placed that the portion of the ballot bearing the number in the upper right-hand corner may be readily and easily detached from the emergency paper ballot;

B. be uniform in size;

C. be printed on good quality white paper;

D. be printed in plain black type;

E. have all words, phrases and the names of the candidates printed in their proper places; and

F. have the legislative district, commissioner district and precinct numbers printed on each emergency paper ballot.



**History:** 1953 Comp., § 3-12-78, enacted by Laws 1977, ch. 222, § 47; 1987, ch. 249, § 39; 1991, ch. 105, § 34.

## ANNOTATIONS

**The 1991 amendment**, effective April 2, 1991, substituted "phrases and" for "and phrases except" in Subsection E.

### **1-12-45. Emergency situations; emergency paper ballots; form for primary.**

A. Emergency paper ballots used in the primary election by each party shall be set up on the ballot paper as follows:

- (1) across the top shall be printed the words, "OFFICIAL PRIMARY ELECTION BALLOT";
- (2) on the next line shall be printed the name of the qualified political party and the date of the primary election;
- (3) on the next line shall be printed the name of the county in which the ballot is used;
- (4) on the next line shall be printed the words, "To vote for a person, mark either a cross (X) or a check ( Ö) in the box at the right of the name of each person for whom you desire to vote." ;
- (5) thereafter, there shall be printed consecutively the designated office and to the extreme right of that same line shall be printed the words, "Vote For," then the words, "one," "two" or another spelled number designating how many persons under that office are to be voted for;
- (6) following and below the designation of office there shall be printed the name of each candidate for that office, with a box directly opposite and to the right of the name wherein the voter may make his cross (X) or check ( Ö). The names of the candidates shall be printed on equal margin, one under another, and in the order and manner provided by law. The boxes following each name shall be of the same size and each shall not be more than one-sixth of an inch apart; and
- (7) the name of each office for which candidates are to be nominated along with the candidates' names shall be separated from the succeeding office and list of candidates on the emergency paper ballot by a heavy black line to designate that office clearly.

B. The emergency paper ballot used in the primary election shall have no other printing or distinguishing mark on the ballot, except at the bottom shall appear the facsimile signature of the county clerk and the words in bold, black type, "OFFICIAL PRIMARY ELECTION BALLOT."

C. Emergency paper ballots used in the primary election shall be numbered consecutively by party.

**History:** 1953 Comp., § 3-12-79, enacted by Laws 1977, ch. 222, § 48; 1979, ch. 57, § 2.

**ANNOTATIONS**

**Cross references.** - For order of candidates on primary ballot, see 1-8-43 NMSA 1978.

**1-12-45.1. Emergency situations; counties using marksense ballots.**

The marksense ballot shall be used and completed in the manner prescribed in Section 1-12-25.1 NMSA 1978 and returned to the presiding judge who shall place it in a locked ballot box to be counted when the machine is repaired or replaced or at the time the polls close. Counting and handling marksense ballots in emergency situations shall be done as prescribed for emergency paper ballots.

**History:** 1978 Comp., § 1-12-45.1, enacted by Laws 1991, ch. 105, § 35.

**1-12-46. Emergency situations; emergency paper ballots; form for general election.**

Emergency paper ballots used in the general election shall be in the form prescribed by the secretary of state and shall conform to the following requirements:

A. each emergency paper ballot shall have printed thereon the name of each candidate whose certificate of nomination has been filed according to the Election Code [this chapter], and no other names;

B. the names of each party's candidates shall be printed on the ballot in the column under the party name and emblem, and the name of each candidate shall be printed under the title of the office for which he has been nominated. No party name or emblem shall appear on the emergency paper ballot unless certificates thereof have been filed as provided by the Election Code;

C. there shall be printed on the top of each emergency paper ballot the following:

"OFFICIAL GENERAL ELECTION BALLOT

Election held

.....(insert date)"; and

D. there shall be printed on the bottom of each ballot the following:

"OFFICIAL GENERAL ELECTION BALLOT"

followed by a facsimile signature of the county clerk.

**History:** 1953 Comp., § 3-12-80, enacted by Laws 1977, ch. 222, § 49.

### **ANNOTATIONS**

**Cross references.** - For filing party name and emblem, see 1-7-6 NMSA 1978.

For nominating procedures, see 1-8-1 NMSA 1978 et seq.

#### **1-12-47. Emergency situations; emergency paper ballots; write-in candidates.**

Where space is allowed on an emergency paper ballot for entering the name of a write-in candidate, that space shall be clearly designated by the use of the heading "write-in candidate".

**History:** 1953 Comp., § 3-12-81, enacted by Laws 1977, ch. 222, § 50.

#### **1-12-48. Emergency situations; emergency paper ballots; number supplied.**

A. The county clerk shall supply to each precinct a quantity of emergency paper ballots equal to five percent of the total number of voters in that precinct. Such emergency paper ballots shall be used only as provided in Section 1-12-43 NMSA 1978.

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

**History:** 1953 Comp., § 3-12-82, enacted by Laws 1977, ch. 222, § 51.

### **ANNOTATIONS**

**Cross references.** - For ballots and ballot labels, see 1-10-1 NMSA 1978 et seq.

**Numbering of paper ballots.** - Since the use of paper ballots will be made only in exceptional circumstances and in occasional instances to take care of voting by persons presenting a triplicate registration certificate whose name does not appear in the

registration book, it is suggested that the entire 10% required for the county as to precincts or election districts using voting machines be numbered consecutively from no. 1 to the total number of ballots being printed. 1953-54 Op. Att'y Gen. No. 5920 (opinion rendered under former law).

### **1-12-49. Emergency situations; election supplies.**

The secretary of state shall provide for the procurement of emergency paper ballot election supplies.

**History:** 1953 Comp., § 3-12-83, enacted by Laws 1977, ch. 222, § 52.

### **1-12-50. Emergency situations; emergency paper ballots; one to a voter.**

If a voting machine cannot be used in an emergency situation, the election clerk shall give each voter only one of the emergency paper ballots being used in the election. At primary elections, the voter shall be given the emergency paper ballot of the political party designated in his original certificate of registration. The emergency paper ballots shall be numbered consecutively and shall be delivered to incoming voters in consecutive order, beginning with emergency paper ballot number one.

**History:** 1953 Comp., § 3-12-84, enacted by Laws 1977, ch. 222, § 53; 1993, ch. 314, § 56; 1993, ch. 316, § 56.

## **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 56 and Laws 1993, ch. 316, § 56, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in the second sentence. The section is set out as amended by Laws 1993, ch. 316, § 56. See 12-1-8 NMSA 1978.

### **1-12-51. Emergency situations; unauthorized receipt or delivery of emergency paper ballot.**

Unless otherwise provided by law a voter shall not receive an emergency paper ballot from any person other than from a member of the precinct board of the polling place where he is authorized to vote. No person other than a member of the precinct board or officer authorized by law shall deliver an emergency paper ballot to any voter.

**History:** 1953 Comp., § 3-12-85, enacted by Laws 1977, ch. 222, § 54.

### **1-12-52. Emergency situations; occupation of voting machines when used to mark emergency paper ballots.**

Unless otherwise provided by law, when voting machines are used as voting booths to mark emergency paper ballots, they shall not be occupied by more than one person at a time. A voter shall not remain in or occupy such voting machine longer than is necessary to prepare his emergency paper ballot, which shall not exceed five minutes.

**History:** 1953 Comp., § 3-12-86, enacted by Laws 1977, ch. 222, § 55.

## ANNOTATIONS

**Cross references.** - For accompanying voter into voting machine when he asks for assistance, see 1-12-15, 1-12-16 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 330.

29 C.J.S. Elections § 206.

### **1-12-53. Emergency situations; voters; emergency paper ballot; general election; marking.**

The voter in preparing an emergency paper ballot in a general election shall:

A. if he wishes to vote a straight party ticket, mark a cross (X) or a check ( Ö) in the circle beneath the name of the party and his vote shall be considered as having been cast for every candidate named on the ticket of that party on the ballot, unless he also votes for one or more candidates in some other column or for some person whose name is not printed on the ballot;

B. if he marks a cross (X) or a check ( Ö) in any circle and also desires to vote for a candidate of another political party (the ticket of which also appears on the ballot) or for any person by write-in, mark a cross (X) or a check ( Ö) in the box immediately to the right of the name of the candidate or write in the name of the person for whom he desires to vote in the blank provided therefor and mark a cross (X) or a check ( Ö) in the box immediately to the right thereof, and his vote shall be considered as having been cast for every candidate of the political party below the party name where he marked his cross (X) or a check ( Ö) in the circle, except for the candidates for whom he has otherwise voted; or

C. if he wishes, mark the ballot by omitting the cross (X) or check ( Ö) in the circle and marking a cross (X) or a check ( Ö) in the box immediately to the right of the name of every candidate or person for whom he desires to vote, and his vote shall be considered as having been cast only for the candidate or person opposite whose name the cross or check has been marked.

**History:** 1953 Comp., § 3-12-87, enacted by Laws 1977, ch. 222, § 56; 1979, ch. 57, § 3.

## ANNOTATIONS

**Cross references.** - For marking emergency ballots for state constitutional amendments, see 1-12-54 NMSA 1978.

For procedure after marking, see 1-12-57 NMSA 1978.

**Elector who is blind or physically disabled may be actively assisted** by certain election officials in marking his ballot in precincts wherein voting machines are used, if said elector was physically disabled or blind when casting or marking his ballot in precinct where ballot boxes were used. 1953-54 Op. Att'y Gen. No. 5897 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 338 et seq.

29 C.J.S. Elections §§ 174 to 178.

### **1-12-54. Emergency situations; voting on constitutional amendments and other questions by emergency paper ballot.**

If a constitutional amendment or other question is submitted to the voters by emergency paper ballot, the voter shall mark his emergency paper ballot by making a cross (X) or a check ( Ö) in the box for or against the proposed amendment.

**History:** 1953 Comp., § 3-12-88, enacted by Laws 1977, ch. 222, § 57; 1979, ch. 57, § 4.

## ANNOTATIONS

**Cross references.** - For constitutional amendments or other questions, see 1-16-1 NMSA 1978 et seq.

### **1-12-55. Emergency situations; emergency paper ballots; use of pen.**

All crosses or checks on the emergency paper ballot shall be made only with pen. The cross used in marking emergency paper ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "V"-shaped mark with it being permissible for either side of the "V" being longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extend outside the circle or box, shall be counted as a valid marking of the ballot.

**History:** 1953 Comp., § 3-12-89, enacted by Laws 1977, ch. 222, § 58; 1979, ch. 57, § 5.

## ANNOTATIONS

**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. Emergency situations; emergency paper ballots; identification marks.**

A voter shall not place any mark on his emergency paper ballot by which it may be afterwards identified as one voted by him.

**History:** 1953 Comp., § 3-12-90, enacted by Laws 1977, ch. 222, § 59.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 348 et seq.

29 C.J.S. Elections §§ 183 to 189.

### **1-12-57. Emergency situations; emergency paper ballots; procedure after marking.**

After marking and preparing his emergency paper ballot, the voter:

A. shall, before leaving the voting machine, fold his ballot so that the number on the ballot appears on the outside, without displaying the marks on its face, and he shall keep it folded until he has voted;

B. shall not show it to any person in such a way as to reveal its contents; and

C. shall 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 paper ballot in the ballot box in the presence of the voter.

**History:** 1953 Comp., § 3-12-91, enacted by Laws 1977, ch. 222, § 60.

## ANNOTATIONS

**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. Emergency situations; emergency paper ballots; delivery of two or more ballots folded together.**

Every voter who knowingly hands to the presiding judge two or more emergency paper ballots folded together is guilty of a fourth degree felony.

**History:** 1953 Comp., § 3-12-92, enacted by Laws 1977, ch. 222, § 61.

**ANNOTATIONS**

**Cross references.** - For offenses and penalties, see 1-20-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 468.

29 C.J.S. Elections § 325.

**1-12-59. Emergency situations; person authorized to receive emergency paper ballot.**

Only the presiding judge shall receive from any voter an emergency paper ballot prepared by such voter. No person shall examine or solicit the voter to show his emergency paper ballot.

**History:** 1953 Comp., § 3-12-93, enacted by Laws 1977, ch. 222, § 62.

**1-12-60. Emergency situations; emergency paper ballots; removal of ballot numbers.**

The presiding judge shall not deposit in the ballot box any emergency paper ballot from which the slip containing the number of the emergency paper ballot has not been removed by the presiding judge and handed to the voter.

**History:** 1953 Comp., § 3-12-94, enacted by Laws 1977, ch. 222, § 63.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 315.

29 C.J.S. Elections § 171.



### **1-12-61. Emergency situations; removal of emergency paper ballots.**

No person shall remove any emergency paper ballot from any polling place before the completion of the ballot count.

**History:** 1953 Comp., § 3-12-95, enacted by Laws 1977, ch. 222, § 64.

### **1-12-62. Emergency situations; emergency paper ballots; spoiled or defaced.**

A. A voter who accidentally spoils or erroneously prepares his emergency paper ballot may return the spoiled or erroneously prepared emergency paper ballot to the presiding judge and receive a new emergency paper ballot.

B. The presiding judge in delivering the new emergency paper ballot shall announce the name of the voter and the number of the new emergency paper ballot in an audible tone.

C. Upon the announcement of the presiding judge, the election clerks shall cross out the number of the spoiled or erroneously prepared emergency paper ballot in the signature roster and checklist of registered voters with a single line and shall insert in lieu thereof the number of the new emergency paper ballot.

D. The presiding judge shall mark the spoiled or erroneously prepared emergency 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.

### **ANNOTATIONS**

**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. Emergency situations; election judges; unused emergency paper ballots.**

Immediately upon the closing of the polls and before any ballot box is unlocked, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused emergency paper ballots.

**History:** 1953 Comp., § 3-12-97, enacted by Laws 1977, ch. 222, § 66.

### **ANNOTATIONS**

**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. Emergency situations; county clerk; destruction of unused emergency paper ballots.**

On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the county clerk shall publicly, in his main office, in the presence of as many persons as may assemble there to observe, proceed to destroy every unused emergency paper ballot that remains in his control and forthwith make and file his affidavit in writing as to the number of emergency paper ballots so destroyed.

**History:** 1953 Comp., § 3-12-98, enacted by Laws 1977, ch. 222, § 67.

### **1-12-65. Emergency situations; emergency paper ballots; counting and tallying procedures.**

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the emergency paper ballots 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. Emergency paper ballots not marked as required by the Election Code [this chapter] shall not be counted. The precinct board shall sign the tally sheet certificate.

B. The counting and tallying of emergency paper ballots 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.

### **ANNOTATIONS**

**Cross references.** - For marking emergency paper ballots, see 1-12-53 NMSA 1978.

**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. Emergency situations; emergency paper ballots; signature rosters and tally sheets; disposition.**

A. After the counting and tallying of emergency paper ballots are completed and after all certificates have been executed, the presiding judge and the two election judges shall place one copy of the signature roster 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 remaining copy of the signature roster and the 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 three years after the election to which they apply.

**History:** 1953 Comp., § 3-12-100, enacted by Laws 1977, ch. 222, § 69; 1987, ch. 249, § 41; 1991, ch. 105, § 38.

### **ANNOTATIONS**

**The 1991 amendment**, effective April 2, 1991, inserted "checklists of registered voters" in Subsection C.

### **1-12-67. Emergency situations; emergency paper ballots; material to be placed in ballot box.**

A. After the emergency paper ballots are tallied, the precinct board shall place the following in the ballot box:

(1) the bundles of counted emergency paper ballots;

(2) the envelopes containing spoiled ballots; and

(3) the envelopes containing rejected ballots.

B. After the required items have been placed in the ballot box, 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.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 29 C.J.S. Elections § 234.

### **1-12-68. Emergency situations; emergency paper ballots; county canvass; when recount is required.**

A. If it appears that defective returns cannot be corrected without a recount of the emergency 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 emergency paper ballots 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 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 him 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 emergency 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 emergency 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.

## **ANNOTATIONS**

**Cross references.** - For contests and recounts, see 1-14-1 NMSA 1978 et seq.

### **1-12-69. Emergency situations; disposition of emergency paper ballots.**

A. Forty-five days after adjournment of the state canvassing board, each county clerk in the presence of the district judge or his designated representative shall open all ballot boxes of the precincts for which he has received no notice by registered mail of contest or no judicial inquiry, and he shall take and burn or shred the contents thereof.

B. On those ballot boxes where a recount or judicial inquiry or inspection of contents is sought, the county clerk shall hold them and their contents intact subject to order of the district court or other authority having jurisdiction of the contest or inspection.

C. At least three days prior to the opening of the ballot boxes and burning or shredding of their contents, the county clerk shall notify the county chairman of each political party participating in the election of the time, place and date thereof. The chairman of each political party may be present or may have his accredited representative present.

**History:** 1953 Comp., § 3-12-103, enacted by Laws 1977, ch. 222, § 72; 1981, ch. 149, § 9.

## **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 [this chapter] 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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

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

**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).

**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).

**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).

**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).

**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).

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).

**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. 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.

29 C.J.S. Elections § 238.

### **1-13-7. Post-election duties; county canvass; when recheck is required.**

A. If it appears that the defective returns cannot be corrected without a recheck of the voting machines, the county canvassing board shall immediately notify the district court in writing.

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the county canvassing board for a recheck of the machines from the precinct.

C. The county clerk shall immediately notify the county chairmen of the political parties who participated in the election of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in Section 1-13-9 NMSA 1978.

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be disposed of as in the first instance: one each to the county clerk and one each to the secretary of state.

**History:** 1953 Comp., § 3-13-7.1, enacted by Laws 1977, ch. 222, § 76.

### **ANNOTATIONS**

**Cross references.** - For application for recount, see 1-14-14 NMSA 1978.

For recounts, see 1-14-14 to 1-14-21 NMSA 1978.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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).

**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 to ascertain if missing election returns are enclosed therein, the ballot box shall be opened in the presence of the county canvassing board by the county clerk and the district judge, or someone designated by him. If it is necessary to send the key of the ballot box to his designated representative, the district judge shall send it by certified mail, and it shall be returned in the same manner. Where 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.

### **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.

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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).

**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).

**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 [this chapter].

**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.

**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).

**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).

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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).

**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).

### **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. Hockenhull, 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 [this chapter] 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 machines.**

A. Thirty days after adjournment of the state canvassing board, each county clerk in the presence of the district judge or his designated representative shall open all voting machines of the precincts for which he has received no notice by registered mail of contest or no judicial inquiry, and he shall clear such machines of all votes cast thereon.

B. The county clerk shall keep locked those voting machines whereof a recount, judicial inquiry or inspection is sought, subject to order of the district court or other authority having jurisdiction of the contest or inspection.

C. At least three days prior to the opening and clearing of the voting machines, the county clerk shall notify the county chairman of each political party participating in the election of the time, place and date thereof. The chairman of the political party may be present or may have his accredited representative present at such opening and clearing.

D. Nothing in this section shall prohibit the use of voting machines in a subsequent election. If the voting machine must be cleared before the thirty-day period prescribed in Subsection A of this section for use in any election, the county clerk shall first obtain an order from the district court for such clearance.

**History:** 1953 Comp., § 3-13-22.1, enacted by Laws 1971, ch. 317, § 21; 1981, ch. 153, § 1.

### **ANNOTATIONS**

**Cross references.** - For unlawful opening of a voting machine, see 1-20-5 NMSA 1978.

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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 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).

**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).

**Contests not applicable to local option election.** - Rights to an 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).

**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).

**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).

**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).

**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).

**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).

**Justices of peace (now magistrates) and constables may institute** election contest proceedings. Carabajal v. Lucero, 22 N.M. 30, 158 P. 1088 (1916).

**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).

**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).

**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).

**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).

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).

**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).

**Residency challenge of candidate** is proper election contest. *Thompson v. Robinson*, 101 N.M. 703, 688 P.2d 21 (1984).

**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).

**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).

**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).

**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**

**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, 1 N.M. 272 (1859) (decided under former law).

**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).

**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.

**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).

**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).

**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).

**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).

**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).

**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).

**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).

**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).

**Rules of civil procedure apply** to election contests except when inconsistent. Heth v. Armijo, 83 N.M. 498, 494 P.2d 160 (1972).

**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).

**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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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).

**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. 1931-32 Op. Att'y Gen. p. 58.

**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).

**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).

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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 [this chapter] 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.

**The 1991 amendment**, effective April 2, 1991, substituted "include tally sheets" for "includes poll books, tally books, affidavits for assistance".

**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, and both approved April 8, 1993, which substituted "certificates" for "affidavits" and made a minor stylistic change. The section is set out as amended by Laws 1993, ch. 316, § 57. See 12-1-8 NMSA 1978.

### **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 [this chapter];
- 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 [this chapter] 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 word "contest" was inserted by the compiler as the apparently intended term. The bracketed material was not enacted by the legislature and is not a 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 [this chapter] 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.

**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.

### **1-14-14. 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 emergency paper ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the proper canvassing board, may have a recount of the emergency paper ballots or absentee ballots, or a recheck of the votes shown on the voting machines, that were cast in the precinct.



B. In the case of any office for which the 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.

## 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.

**Compiler's notes.** - Several of the following notes are from cases and opinions decided under former Election Code provisions.

**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).

**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).

**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).

**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).

**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).

**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).

**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. 6478.

**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).

**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 fifty dollars (\$50.00) in cash, or a sufficient surety bond in an amount equal to fifty dollars (\$50.00), 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 ten dollars (\$10.00) in cash, or a sufficient surety bond in an amount equal to ten dollars (\$10.00), for each voting machine to be rechecked.

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, they 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.

### ANNOTATIONS

**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.

**Repeals and reenactments.** - Laws 1978, ch. 48, § 1, repeals 3-14-19, 1953 Comp., (former 1-14-15 NMSA 1978), relating to recounts, rechecks and cost of proceedings, and enacts the above section.

**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.

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

## **1-14-16. Recount or recheck proceedings; state.**

A. Immediately after filing of the application for recount or recheck, the state canvassing board shall issue a summons directed to the precinct board of each precinct specified in the application commanding it to appear at the county seat of the county wherein the precinct is situated on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for a recount or recheck. The summons shall be forwarded to the county clerk of the concerned county.

B. Upon receipt of the summons, the county clerk shall deliver it to the sheriff who shall forthwith personally serve it upon each of the precinct board members. The county clerk shall thereupon send notices by registered mail of the date fixed for recount or recheck to the district judge for the county and to the county chairman of each of the political parties that participated in the election in that precinct.

C. The precinct boards, district judge and the county clerk shall meet at the county courthouse at 10:00 a.m. on the date fixed for the recount or recheck, and the ballot boxes or voting machines of the precincts involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the emergency paper ballots or the absentee ballots, or recheck the votes cast on the voting machine, 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 him, and any other person who may desire to be present.

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

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the secretary of state the results of the recount or recheck. The district judge, or the person designated to act for him, 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.

## **ANNOTATIONS**

**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. Recount and recheck proceedings; county.**

A. Immediately upon filing of the application for recount or recheck, the district judge shall by order fix the place and date of the recount or recheck, which date shall not be more than ten days after the filing of the application. Such order of the district judge shall direct the county clerk to issue a summons to the precinct board of the precinct complained of. It shall command them to attend at the time and place specified therein and to make such recount or recheck.

B. The summons shall be forthwith personally served by the sheriff upon each precinct board member.

C. The county clerk shall notify the county chairman of each political party that participated in the election in that precinct of the date and place fixed for the recount or recheck. The notice shall be by registered mail.

D. The precinct board, district judge and county clerk shall meet at the county courthouse at 10:00 a.m. on the date set.

E. The ballot boxes or voting machines of the precincts involved in the recount or recheck shall be unlocked, and the precinct board shall recount and retally the emergency paper and absentee ballots or recheck the votes cast on the voting machine for the office in question in the presence of the district judge, or person designated to act for him, the county clerk and any other person who desires to be present.

F. At the recount the precinct board of a precinct using emergency paper ballots or absentee ballots shall recount and retally only the ballots which the presiding judge accepted and placed in the ballot box as legal ballots at the time they were cast.

G. After completion of the recount or recheck, the emergency paper ballots or absentee ballots shall be placed in the ballot box and locked, or the voting machines shall be locked and resealed, and the precinct board shall certify to the county canvassing board the results of the recount or recheck. The district judge and county clerk shall certify that such recount or recheck was made in their presence.

**History:** 1953 Comp., § 3-14-21, enacted by Laws 1969, ch. 240, § 346; 1977, ch. 222, § 85.

## ANNOTATIONS

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**Ballot examination in contest not violation of constitutional secrecy clause.** - Code 1915, § 1999, which provided for examination of ballots by board of county commissioners in case of a contest, did not violate secrecy of ballot clause of N.M. constitution, art. VII, § 1. *Hyde v. Bryan*, 24 N.M. 457, 174 P. 419 (1918).

**Failure of recount notice not denial of due process.** - Failure of former statute to require notice of recount to party elected on face of returns was not a denial of due process. *Sandoval v. Madrid*, 35 N.M. 252, 294 P. 631 (1930).

**Limited jurisdiction of court in recount.** - While district courts were empowered to hear application in recount proceedings and to be present during recount, statutes did not confer jurisdiction to hear and determine charges of fraud occurring between original count and the recount, or to annul certificates of recount, or to direct county board of canvassers. *State ex rel. Scott v. Helmick*, 35 N.M. 219, 294 P. 316 (1930).

**No judicial function after order to recount granted.** - District court's jurisdiction or judicial function does not operate in an election contest case after court order has been entered granting a recount. *Chavez v. Baca*, 47 N.M. 471, 144 P.2d 175 (1943).

**Words "examine the votes"** (Comp. Laws 1884, § 1188) meant examine the returns and gave clear authority for opening ballot box to examine ballots cast in a contested election; such authority was incidental to duty to canvass returns, which election board should have done without awaiting command of court. *Territory ex rel. Lewis v. Board of County Comm'rs*, 5 N.M. 1, 16 P. 855 (1888).

**One other than petitioner could file affidavit to disqualify judge.** - When petition for recount had been filed and order directing recount signed, one other than petitioner could file affidavit to disqualify judge although it was too late for petitioner himself to file

the affidavit; county chairman of dominant political party could file such an affidavit. State ex rel. Cruz v. Armijo, 41 N.M. 44, 63 P.2d 1041 (1936); State ex rel. Romero v. Armijo, 41 N.M. 40, 63 P.2d 1039 (1936).

**Judge could compel clerk to summon election officials.** - When district judge ordered county clerk to summon election officials which he failed to do, judge could compel execution of such order but could not entertain motion to quash proceedings because of official's absence. Sandoval v. Madrid, 35 N.M. 252, 294 P. 631 (1930).

**Predecessor judge or representative cannot act as observer at recount.** - After new judge has assumed office, his predecessor cannot act as observer at a recount since his term has expired; by the same token the latter's personal representative is without authority to act for him. Chavez v. Baca, 47 N.M. 471, 144 P.2d 175 (1943).

**Judge's representative not officer of court.** - An attorney who represents a district judge at election recount does not serve as officer of court, but as judge's personal representative. Chavez v. Baca, 47 N.M. 471, 144 P.2d 175 (1943).

**Burden on successful contestee to show ballots not tampered with.** - Burden of proof is upon successful contestee upon recount to show that in interim between the two counts the ballots have not been so exposed as to afford a probability of their having been tampered with; certificates of recount furnish prima facie proof only. Madrid v. Sandoval, 36 N.M. 274, 13 P.2d 877 (1932).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Elections § 389 et seq.

29 C.J.S. Elections §§ 289 to 295.

### **1-14-18. Recount; recheck; recanvass by canvassing boards.**

A. Immediately upon receipt of the certificate of recount or recheck from all the 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 precinct boards instead of the original returns from those 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.

## ANNOTATIONS

**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.

**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).

**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).

**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.

## **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. 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. 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 [10-8-1 to 10-8-8 NMSA 1978], and he shall receive no other compensation. Per diem and mileage shall be paid by the state treasurer on warrants drawn by the secretary of finance and administration in accordance with vouchers approved by the presiding officer of the presidential electors.

**History:** 1953 Comp., § 3-15-10, enacted by Laws 1969, ch. 240, § 360; 1977, ch. 247, § 12.

### **1-15-11. United States senator; nomination.**

Candidates for the office of United States senator shall be nominated during the year of the general election next preceding the expiration of the term of office of the United States senator whose successor is to be nominated and elected. Nominations shall be in the manner prescribed by the Election Code [this chapter] 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. United States representative; congressional districts established.**

[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). See 1-15-15.1 NMSA 1978 for present comparable provisions.

### **1-15-15.1. [United States representative; congressional districts.]**

A. Congressional district number one is composed of Torrance county; Bernalillo county precincts number [precinct numbers] 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 101, 102, 103, 104, 105, 106, 107, 111, 112, 113, 114, 120, 121, 122, 123, 124, 125, 131, 132, 133, 135, 150, 151, 152, 153, 154, 161, 162, 163, 164, 165, 166, 180, 181, 182, 183, 184, 185, 186, 187, 191, 192, 193, 194, 195, 196, 197, 211, 212, 214, 215, 216, 217, 221, 223, 224, 225, 226, 241, 242, 243, 244, 245, 246, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273, 274, 275, 278, 281, 282, 283, 284, 285, 286, 287, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 313, 314, 315, 316, 317, 318, 321, 322, 323, 326, 327, 328, 329, 330, 331, 332, 333, 341, 342, 343, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356, 357, 358, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 449, 450, 451, 452, 453, 454, 461, 462, 463, 464, 465, 466, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 571, 573, 601 and 602; Sandoval county precincts number [precinct numbers] 1, 2, 3, 4, 5, 28, 29, 38, 55, 56 and 64; Santa Fe county precincts number [precinct numbers] 15, 73 and 84; and Valencia county precincts number [precinct numbers] 6, 8, 15, 16, 28, 29, 30, 32, 33, 34 and 38.

B. Congressional district number two is composed of Catron, Cibola, Chaves, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, Otero, Sierra and Socorro counties; Bernalillo county precincts number [precinct numbers] 31 and 93; McKinley county precinct numbers 26, 27, 29 and 30; and Valencia county precincts

number [precinct numbers] 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 35, 36 and 37.

C. Congressional district number three is composed of Colfax, Curry, Harding, Los Alamos, Mora, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Taos and Union counties; Bernalillo county precincts numbers [precinct numbers] 1, 80, 84 and 85; McKinley county precinct numbers [precinct numbers] 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50; Sandoval county precincts numbers [precinct numbers] 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 58, 59, 60, 61, 62, 63 and 67; and Santa Fe county precincts number [precinct numbers] 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85 and 86.

## ANNOTATIONS

**Compiler's notes.** - This section of NMSA 1978 was copied from the Final Judgment and Order in *Jepsen v. Vigil-Giron*, D-0101-CV-2001-02177 (1st Dist. Ct., filed January 8, 2002).

This portion of the court order was compiled pursuant to the language of the court order. The bracketed language was added by the compiler and is not part of the original court order.

### **1-15-16. United States representative; composition of districts.**

[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). See 1-15-15.1 NMSA 1978 for present comparable provisions.

### **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**

**Compiler's notes.** - Several of the following notes are from cases decided under former Election Code provisions.

**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).

**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).

**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, and Laws 1983, ch. 232, § 17, both repeal 1-15-17.1 NMSA 1978, which provided that the provisions of that act (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 2-7A-1 to 2-7A-79 NMSA 1978. Laws 1982 (2nd S.S.), ch. 2, enacted 2-8A-1 to 2-8A-52 NMSA 1978. Laws 1982 (2nd S.S.), ch. 4, enacted 1-15-16 and 1-15-17.1 NMSA 1978 and amended 1-15-15 and 1-15-17 NMSA 1978.

Articles 7A and 8A of Chapter 2 NMSA 1978 were held unconstitutional in 1982. See case notes following 2-7C-1 and 2-8C-1 NMSA 1978.

Laws 1982 (3d S.S.), ch. 3, § 12, makes the act effective on June 23, 1982.

Laws 1983, ch. 232, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983, making the act effective June 17, 1983. See N.M. Const., art. IV, § 23.

### **1-15-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 232, § 17, repeals 1-15-18 NMSA 1978, 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 Subsection E 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 chairman 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 [this chapter]; 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, such vacancy shall be filled at that general election of the same year. Candidates seeking the office of United States representative in such 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.

**History:** 1978 Comp., § 1-15-18.1, enacted by Laws 1983, ch. 232, § 16.

### **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 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 [this chapter].

**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).

**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.

**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).

**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).

**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).

**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. 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 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. 6181 (opinion rendered under former law).

**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 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 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.

## **1-16-5. State constitutional amendments; ballot; forms for emergency paper ballots and absentee ballots.**

A. All emergency paper ballots and absentee ballots proposing constitutional amendments shall have printed thereon in both English and Spanish 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. Below the printed title there shall be printed on the ballot two one-quarter inch blank boxes. Opposite one of the blank boxes there shall be printed in both English and Spanish the words "FOR" and opposite the other blank box shall be printed in both such languages the words "AGAINST".

B. There shall be printed across the top of such ballot the following: "Instructions to voters: If you desire to vote for the amendment, mark a cross (X) or a check ( Ö ) or any other mark clearly indicating intention in the [ ] opposite the words "FOR." If you desire to



vote against the amendment, mark a cross (X) or a check ( Ö) or any other mark clearly indicating intention in the [] opposite the words "AGAINST".

**History:** 1953 Comp., § 3-16-5, enacted by Laws 1969, ch. 240, § 378; 1977, ch. 222, § 94; 1981, ch. 146, § 2.

## ANNOTATIONS

**Cross references.** - For absentee ballots, see 1-6-3 to 1-6-11 NMSA 1978.

For emergency paper ballots, see 1-12-43 to 1-12-69 NMSA 1978.

**No authority to number ballots.** - Since there is nothing in the law referring to numbering of ballots for submitting constitutional amendments at special elections, the secretary of state has no authority to have ballots numbered by the printer. 1949-50 Op. Att'y Gen. No. 5233 (opinion rendered under former law).

### **1-16-6. State constitutional amendments; marking emergency paper ballots and absentee ballots.**

A voter desiring to mark his emergency paper ballot or absentee ballot for or against a proposed constitutional amendment shall do so in the manner specified in the instructions printed on the emergency paper ballot or absentee ballot.

**History:** 1953 Comp., § 3-16-6, enacted by Laws 1969, ch. 240, § 379; 1977, ch. 222, § 95.

## ANNOTATIONS

**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.

**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. 5315 (opinion rendered under former law).

## **1-16-9. State constitutional amendments; single emergency paper ballot and absentee ballot.**

Proposed constitutional amendments or other questions submitted to the voters on emergency paper ballots or absentee ballots at any election shall be printed upon one ballot only.

**History:** 1953 Comp., § 3-16-8, enacted by Laws 1969, ch. 240, § 381; 1977, ch. 222, § 98.

## **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. State constitutional amendments; general elections.**

At all general elections at which any proposed constitutional amendment or question is submitted to the voters, the emergency paper ballot or absentee ballot on the proposed constitutional amendment or question shall be printed on the emergency paper ballot or absentee ballot for the election of officers.

**History:** 1953 Comp., § 3-16-12, enacted by Laws 1969, ch. 240, § 385; 1977, ch. 222, § 99.

### **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, repeals 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 [30-1-1 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*, 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 [30-1-1 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*, 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, repeals 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 his 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 him 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 any 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 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 by certified or registered mail, by telecopier, electronic mail 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 includes 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; provided that a political committee includes a single individual who by his actions represents that he is a political committee and a person or an organization of two or more persons that within one calendar year expends funds in excess of two thousand dollars (\$2,000) 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 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.

## ANNOTATIONS

**1993 amendments.** - Laws 1993, ch. 46, § 1 amended this section, effective July 1, 1993, approved March 18, 1993, which rewrote this section to the extent that a detailed comparison is impracticable. Laws 1993, ch. 55, § 12, amended this section, effective November 15, 1993, approved March 18, 1993, which inserted "or pre-primary convention designation" near the middle of Subsection D; in Subsection E, inserted "or pre-primary convention" near the beginning of the subsection and deleted "a pre-primary designating convention or" following "a candidate at" near the end of the subsection; and made minor stylistic changes. However, Laws 1993, ch. 314, § 58, amended this section, effective June 18, 1993, approved April 8, 1993, which also rewrote the section to the extent that a detailed comparison would be impracticable. The section is set out as amended by Laws 1993, ch. 314, § 58. See 12-1-8 NMSA 1978.

**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 1997 amendment** added Subsection A and redesignated the following subsections accordingly. Laws 1997, ch. 112 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 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).

**The 2002 amendment**, effective May 15, 2002, substituted "five hundred dollars (\$500)" for "two thousand dollars (\$2,000)" in Subsections A and B.

#### **1-19-26.2. Rules and regulations.**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

**History:** Laws 1997, ch. 112, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 112 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 [1-19-25 to 1-19-36 NMSA 1978] 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 [1-19-25 to 1-19-36 NMSA 1978]; 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

### **1-19-27. Reports required; proper filing officer.**

A. Except for those candidates who file a statement of exception in an election year pursuant to Section 1-19-33 NMSA 1978, all reporting individuals shall annually file with the proper filing officer a report of expenditures and contributions on a prescribed form. The report shall be filed on the second Monday in May pursuant to the provisions of Subsection A of Section 1-19-29 NMSA 1978.

B. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the secretary of state for a public official in or a candidate seeking any of the following offices:

(1) a statewide elective office;

(2) an elected judicial office in the judicial department, except a magistrate; and

(3) an office representing a district composed of more than one county, except that legislators representing or candidates seeking to represent multicounty districts may file reports of expenditures and contributions or statements of exception with either the secretary of state or with the county clerk in the county in which they reside.

C. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the county clerk for a public official in or a candidate seeking any of the following offices:

(1) an elective county office;

(2) a magistrate; and

(3) a state legislative office elected from a district located wholly within one county.

D. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

**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.

### **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 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 repeals 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 1991 Replacement Pamphlet. As to 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 exception 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 exception. 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.

#### **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.

**1993 amendments.** - Laws 1993, ch. 46, § 4, enacted an amendment to this section, effective July 1, 1993, approved March 18, 1993, which inserted "political committees;



candidates" in the section heading and rewrote this section to the extent that a detailed comparison is impracticable. Laws 1993, ch. 55, § 13, enacted an amendment to this section, effective November 15, 1993, approved March 18, 1993, which inserted "by nominating petition or by pre-primary convention designation" in the second sentence. However, Laws 1993, ch. 314, § 59 enacted an amendment to this section, effective June 18, 1993, approved April 8, 1993, which rewrote the section to the extent that a detailed comparison would be impracticable. The section is set out as amended by Laws 1993, ch. 314, § 59. See 12-1-8 NMSA 1978.

**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".

### **1-19-29. Time and place of filing reports.**

A. Annually, all reporting individuals shall file with the proper filing officer 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. The report shall be filed annually until the reporting individual's bank account has been closed and the other provisions specified in Subsection E of this section have been satisfied.

B. In an election year, in addition to the May report provided for in Subsection A of this section, all reporting individuals, except for persons who file a statement of exception pursuant to Section 1-19-33 NMSA 1978 and except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received according to the following schedule:

(1) 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;

(2) 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 nonstatewide 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

(3) 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. Notwithstanding the other provisions of this section, the report due on the thirtieth day after an election need be the only report filed after the annual May report if the candidate is not opposed in the election and if the report includes all expenditures made and contributions received for that election and not previously reported.

D. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

E. Each reporting individual shall file a report of expenditures and contributions annually pursuant to the filing schedule 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.

F. Each treasurer of a political committee shall file a report of expenditures and contributions annually pursuant to the filing schedule 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.

G. 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 he receives or expenditures he makes and who does not ultimately file a declaration of candidacy or a nominating petition with the proper filing officer shall nevertheless file a report, not later than the second Monday in May for a primary election or the second Monday in October for a general election, of all contributions received and expenditures made on or before the first Monday in May for a primary election or the first Monday in October for a general election, and not previously reported.

**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.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1993, ch. 46, § 5 repeals former 1-19-29 NMSA 1978, as amended by Laws 1981, ch. 331, § 6, relating to time of filing reports, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

**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".

**The 1997 amendments.** - Laws 1997, ch. 12, § 1, amending this section by substituting "by 5:00 p.m. on the Thursday" for "by 12:00 noon on the Friday" at the beginning of Paragraph B(2), was approved March 17, 1997. However, Laws 1997, ch. 112, § 3, also amending this section by rewriting Paragraph B(2) and inserting "regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required" in Subsection E, was approved April 9, 1997. This section is set out as amended by Laws 1997, ch. 112, § 3. See 12-1-8 NMSA 1978. Laws 1997, chs. 12 & 112 contain no effective date provisions, but, pursuant to N.M. Const., art. IV, § 23, are effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **1-19-29.1. Campaign funds; limitation on use.**

A. It is unlawful for any candidate or his 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 [1-19-25 to 1-19-36 NMSA 1978];

(6) donations to a political party 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.

## ANNOTATIONS

**Cross references.** - For Code of Judicial Conduct, see Canon 21-001 NMRA et seq.

**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 Subsections B which prohibited the use of contributions received in a federal election campaign in a state election campaign; and added Subsection C.

**Internal Revenue Code.** - Section 170 of the Internal Revenue Code of 1986, referred to in this section, appears as 26 U.S.C.S. § 170.

**Code of Judicial Conduct.** - The Code of Judicial Conduct appears as Rule 21-001 NMRA et seq.

**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 repeals former 1-19-30 NMSA 1978, as amended by Laws 1989, ch. 232, § 1, relating to reporting period, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

### **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. The report of expenditures and contributions shall be subscribed and sworn to by the candidate or the treasurer of the political committee. If the report of expenditures and contributions is filed in an electronically readable format, the report shall be subscribed and sworn to in an independent affidavit signed by the candidate or the treasurer of the political committee and delivered to the secretary of state within forty-eight hours after the report is electronically filed.

C. 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.

D. 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.

### **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.

**The 1993 amendment**, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1994 amendment**, effective May 18, 1994, added the second sentence in Subsection B.

**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.

**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; 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.

**History:** 1978 Comp., § 1-19-32, enacted by Laws 1979, ch. 360, § 8; 1993, ch. 46, § 8; 1995, ch. 153, § 8.

### **ANNOTATIONS**

**Cross references.** - For Public Records Act, see Chapter 14, Article 3 1978.

**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 May 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.

C. A county clerk shall deliver to the secretary of state, within forty-eight hours of the county clerk's receipt, each report of expenditures and contributions or statement of exception filed with the county clerk's office. Within forty-eight hours of receipt of a report of expenditures and contributions or statement of exception filed by a legislative candidate for a multicounty district, the secretary of state shall deliver to each county clerk in the multicounty legislative district a copy of the report or statement filed.

**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.

### **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 1995 amendment**, effective June 16, 1995, rewrote the section to the extent that a detailed analysis is impracticable.

### **1-19-33. Exclusion of certain candidates from reporting; statement of exception.**

A. In a year in which a primary, general or special statewide election is held, a person who seeks or considers a public office covered by the Campaign Reporting Act and who anticipates receiving or expending for the election less than one thousand dollars (\$1,000) for a non-statewide office, or two thousand five hundred dollars (\$2,500) for a statewide office, may file, in lieu of filing a report of expenditures and contributions, a statement of exception to that effect before the election on a prescribed form and under penalty of perjury. The statement of exception shall be filed by 5:00 p.m. on the second Monday in May for a primary or special statewide election or by 5:00 p.m. on the second Monday in October for a general or special statewide election. The statement shall be filed with the proper filing officer.

B. Upon the filing of the statement of exception, the candidate shall not be required to file a report of expenditures and contributions except as provided in Subsection D of this section.

C. A statement of exception that is not timely filed or that includes false or incomplete information shall be subject to the notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978.

D. If at any time after filing a statement of exception a candidate receives or expends in an election more than the threshold amounts provided in Subsection A of this section, the candidate shall file reports of expenditures and contributions according to the reporting schedule provided in Section 1-19-29 NMSA 1978.

**History:** 1978 Comp., § 1-19-33, enacted by Laws 1979, ch. 360, § 9; 1993, ch. 46, § 10; 1995, ch. 153, § 10.

### **ANNOTATIONS**

**Cross references.** - For time of filing statements of candidacy for convention designation or declarations of candidacy, see 1-8-26 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, in the first sentence of Subsection A, substituted "one thousand dollars (\$1,000)" for "five hundred dollars (\$500)" and "a declaration of candidacy, or at the time of filing the first report of expenditures and contributions required by Section 1-19-29 NMSA 1978" for "a statement of candidacy for convention designation or declaration of candidacy, or ten days prior to the election in which such person is a candidate"; substituted "one thousand dollars (\$1,000)" for "five hundred dollars (\$500)" in Subsection B; and made a minor stylistic change.

**The 1995 amendment**, effective June 16, 1995, inserted "statement of exception" in the section heading, rewrote Subsections A and B, and added Subsections C and D.



## **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 his 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 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 him, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursal or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions 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.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, rewrote the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

**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.

**Internal Revenue Code.** - Section 170 of the Internal Revenue Code of 1986, referred to in this section, appears as 26 U.S.C. § 170.

**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.

### **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 or political committee to make, 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 actually from another person or entity that directed that the contribution not be publicly reported.

**History:** 1978 Comp., § 1-19-34.3, enacted by Laws 1993, ch. 46, § 14; 1994, ch. 84, § 1; 1995, ch. 153, § 14.

#### **ANNOTATIONS**

**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.

**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".

#### **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 [10-16A-1 to 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

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 [44-7-1 to 44-7-22 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 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.

**The 1997 amendment** substituted "that" for "the Campaign Reporting" in Subsection A, made minor stylistic changes in Subsection B, and rewrote Subsections D, E, and F. Laws 1997, ch. 112 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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.

### ANNOTATIONS

**Effective dates.** - Laws 1995, ch. 153 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **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.

## ANNOTATIONS

**Effective dates.** - Laws 1995, ch. 153 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 (2) 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 exception 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 [Chapter 1 NMSA 1978], 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 exception 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, 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 (2) 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 exception 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 his 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 exception 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.

## 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 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1994 amendment,** effective May 18, 1994, deleted "final" preceding "report" near the beginning of Subsection A.

**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 1997 amendments.** - Laws 1997, ch. 12, § 2, amending this section by substituting "Thursday" for "Friday" in Subsections A and B, and inserting "intentionally" preceding "incomplete" and substituting "Two hundred fifty dollars (\$250)" for "five hundred dollars (\$500)" in Subsection B, was approved March 17, 1997. However, Laws 1997, ch. 112, § 5, also amending this section by substituting "Thursday" for "Friday" in Subsections A and B and "that act" for "the Campaign Reporting Act" in Subsection F, but not giving effect to the changes made by the first 1997 amendment, was approved April 9, 1997. This section is set out as amended by Laws 1997, ch. 112, § 5. See 12-1-8 NMSA 1978. Laws 1997, chs. 12 & 112 contain no effective date provisions, but, pursuant to N.M. Const., art. IV, § 23, both are effective June 20, 1997, 90 days after adjournment



of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 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.

**The 1995 amendment**, effective June 16, 1995, added "criminal" in the section heading and substituted "provision" for "of the provisions" in Subsection A.

**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 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 [this chapter].

**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. 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 [this chapter].

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, and both approved April 8, 1993, which substituted "certificate" for "affidavit" throughout the section. The section is 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 [this chapter].

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 [this chapter] 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 clauses.** - Laws 1979, ch. 378, § 18, provides 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. knowingly voting, or offering to vote, in any precinct except that in which one is registered;
- D. voting, or offering to vote, more than once in the same election;
- 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.

## 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.

**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.

### **1-20-9. 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, ballot label or pretended ballot which 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 [this chapter];
- 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.

### **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.

**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 [this chapter] 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.

### **1-20-14. 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 [this chapter].

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 [this chapter] 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.**

Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located, and includes the display of signs or distribution of campaign literature.

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.

### **ANNOTATIONS**

**Cross references.** - For campaign practices, see 1-19-1 NMSA 1978 et seq.

**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.**

Obstructing the polling place consists of:

A. approaching nearer than fifty feet from any polling place during the conduct of the election unless a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election official having business in the polling place or a person authorized by the Election Code [this chapter] to give assistance to a voter; or

B. willfully blocking the entrance to the polling place so as to prevent free ingress and egress.

Whoever obstructs the polling place is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 3-20-15, enacted by Laws 1969, ch. 240, § 441.

## 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.

**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.

### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 102 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 [this chapter] 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 [this chapter] 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 clauses.** - Laws 1969, ch. 240, § 453, provides for the severability of the act if any part or application thereof is held invalid.

**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).

**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).

**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 [1-21-1 to 1-21-14 NMSA 1978] may be cited as the "Federal Voting Rights Compliance Act".

**History:** 1953 Comp., § 3-21-1, enacted by Laws 1971, ch. 322, § 1.

#### **1-21-2. Definitions.**

As used in the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978]:

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 [1-21-1 to 1-21-14 NMSA 1978].

**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 [1-21-1 to 1-21-14 NMSA 1978] 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 is 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 [1-21-1 to 1-21-14 NMSA 1978], 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 [this chapter], 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 is 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 [this chapter].

**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 [this chapter].

**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 [1-21-1 to 1-21-14 NMSA 1978], 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 [this chapter] 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 [this chapter].

**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 [this chapter].

**History:** 1953 Comp., § 3-21-12, enacted by Laws 1971, ch. 322, § 12.

#### **ANNOTATIONS**

**Cross references.** - For cancellation of absentee ballot at death, see 1-6-17 NMSA 1978.

#### **1-21-13. Application of election laws.**

Except as provided in the Federal Voting Rights Compliance Act [1-21-1 to 1-21-14 NMSA 1978], the provisions of law relating to elections held under the provisions of the Election Code [this chapter] 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 [1-21-1 to 1-21-14 NMSA 1978] 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 [1-22-1 to 1-22-19 NMSA 1978]:

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 [1-22-1 to 1-22-19 NMSA 1978], school district elections shall be called, conducted and canvassed as provided in the Election Code [this chapter].

**History:** 1978 Comp., § 1-22-3, enacted by Laws 1985, ch. 168, § 5; 1997, ch. 252, § 1.

## ANNOTATIONS

**The 1997 amendment**, 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. Laws 1997, ch. 252 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**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).

**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.

### **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 [1-22-1 to 1-22-19 NMSA 1978]. The proclamation shall be filed by the superintendent with the county clerk of record on the last Friday 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.

### **ANNOTATIONS**

**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.

**Voting Rights Act.** - The federal Voting Rights Act of 1965, referred to in Subsection C, is compiled as 42 U.S.C. § 1973 et seq.

**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**

**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.

**Voting Rights Act.** - The federal Voting Rights Act of 1965, referred to in Subsection C, is compiled as 42 U.S.C. § 1973 et seq.

**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 [1-22-1 to 1-22-19 NMSA 1978], 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

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 314, § 63 and Laws 1993, ch. 316, § 61, both effective June 18, 1993, and both approved April 8, 1993, which substituted "certificate" for "affidavit" in the form. The section is set out as amended by Laws 1993, ch. 316, § 61. See 12-1-8 NMSA 1978.

**The 1997 amendment** added the language beginning "and was a resident" at the end of the first paragraph of the form. Laws 1997, ch. 252 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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 [1-22-1 to 1-22-19 NMSA 1978], 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 situate. The printed ballot shall contain the name of each candidate and the position on the board for which he 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 and ballot labels 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 used in lieu of a voting machine for:

(1) school districts of less than five hundred average daily membership;

(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 this chapter; or

(3) for emergency ballots in case of a malfunction of the voting machine.

**History:** 1978 Comp., § 1-22-10, enacted by Laws 1985, ch. 168, § 12; 1993, ch. 4, § 1.

## ANNOTATIONS

**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.

**Voting Rights Act.** - The federal Voting Rights Acts of 1965, referred to in Subsection C, is compiled as 42 U.S.C. § 1973 et seq.

### 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

**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.

**Voting Rights Act.** - The federal Voting Rights Act of 1965 is compiled as 42 U.S.C. § 1973 et seq.

### **1-22-12. Conduct of elections.**

A. Except as otherwise provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978], the county clerk shall administer and conduct school district elections pursuant to the provisions of the Election Code [this chapter] 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 [this chapter]; 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 [this chapter] 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 he has the qualifications to be a candidate for membership on the board in the school district election as provided in the School Election Law [1-22-1 to 1-22-19 NMSA 1978].

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 in the proper slot on the voting machine or on the proper line provided on the paper ballot, absentee ballot or emergency ballot for write-in votes for the office and position for which the candidate has declared his intent.

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 he shall not be entitled to have his name 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.

## **ANNOTATIONS**

**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 1-6-8 NMSA 1978] of the Election Code 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 23 MAIL BALLOT ELECTIONS

### 1-23-1. Short title.

This act [1-23-1 to 1-23-7 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 [1-23-1 to 1-23-7 NMSA 1978], "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.**

Except as otherwise provided in the Mail Ballot Election Act [1-23-1 to 1-23-7 NMSA 1978], mail ballot elections shall be conducted in accordance with the provisions of the local government's absentee voter law.

**History:** Laws 1987, ch. 160, § 4.

### **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 of the Mail Ballot Election Act [1-23-5 NMSA 1978] 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 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.

B. 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.

C. After filing the proclamation with the county clerk and not less than fifty 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.

**History:** Laws 1989, ch. 295, § 2.

## ANNOTATIONS

**Voting Rights Act.** - The federal Voting Rights Act of 1965, referred to in this section, appears as 42 U.S.C. § 1973 et seq.

### **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.