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SENATE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ELECTIONS; SETTING STANDARDS FOR THE PURCHASE AND
USE OF VOTING SYSTEMS; REQUIRING A VOTER-VERIFIABLE PAPER
BALLOT; PROVIDING FOR COUNTING AND CANVASSING PROCEDURES;
ALLOWING DISQUALIFIED VOTERS TO CORRECT THEIR BALLOTS AFTER
ELECTION DAY; REQUIRING AUTOMATIC RECOUNTS; PROVIDING FOR AN
ADDITIONAL AUDIT OF ELECTION RETURNS; CREATING A COMMISSION TO
CALL FOR AND CERTIFY ELECTION RECOUNTS AND AUDITS AND TO CALL
FOR NEW ELECTIONS IN PROBLEM AREAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 1, Article 9 NMSA
1978 is enacted to read:

"[NEW MATERIAL] VOTING SYSTEMS--CODE REQUIREMENTS--
PERFORMANCE GUARANTEE--TESTING--VERIFIABLE PAPER BALLOT.--

A. The secretary of state shall not approve a

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1 voting system that does not use open-source software in all
2 parts of the voting system that use software, including vote
3 tabulating machines.

4 B. All voting systems purchased for use in
5 elections in New Mexico shall have a performance guarantee and
6 enforceable remedy if the voting system does not perform as
7 guaranteed.

8 C. Voting systems shall be open to independent
9 audits or investigations as may be required by recounts.

10 D. The secretary of state shall approve for
11 purchase only voting systems that have a voter-verifiable paper
12 ballot."

13 Section 2. A new section of the Election Code is enacted
14 to read:

15 "[NEW MATERIAL] POST ELECTION DUTIES--MEMORY CARTRIDGES--
16 COPIES.--After certification of the election results by the
17 county canvassing board, the county clerk shall print out the
18 memory cartridge and the redundant memory within the voting
19 systems, and shall retain both a hard copy and a copy on a
20 compact disc. The county clerk shall also hand deliver both a
21 hard copy and a compact disc with the election results to the
22 secretary of state. Election data shall not be transmitted
23 over the internet or by other electronic means."

24 Section 3. A new section of Chapter 1, Article 12 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] PAPER BALLOT OPTION.--A voter shall have
2 the right to request and use a paper ballot instead of an
3 electronic or other type of voting system. The vote shall be
4 counted."

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

7 "[NEW MATERIAL] ABSENTEE BALLOT PROCESSING--CANVASSING--
8 OBSERVATION.--The county chairs of all parties with candidates
9 on the ballot shall be notified thirty-six hours in advance of
10 where they may send representatives to observe the processing,
11 opening or counting of absentee ballots, as well as the
12 canvassing process."

13 Section 5. A new section of the Election Code is enacted
14 to read:

15 "[NEW MATERIAL] REMEDIES FOR DISQUALIFIED VOTERS.--

16 A. The county clerk shall notify all voters whose
17 ballots have been disqualified and allow those voters to
18 correct deficiencies so that their ballots may be counted.

19 B. The county clerk shall contact by telephone or
20 letter those registered voters whose ballots were disqualified.
21 If the county clerk is unable to contact disqualified voters
22 because of the lack of address or telephone number, the county
23 clerk shall publish the disqualified voters' names in
24 newspapers of record in each county on the two Sundays
25 following the election.

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1 C. Voters shall have until seventeen days after the
2 election to correct the deficiencies in their ballots.
3 Corrected ballots shall then be counted and added to the totals
4 for the proper precinct."

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

7 "[NEW MATERIAL] ELECTION AUDIT REQUIREMENTS.--

8 A. After an election, an independent audit of the
9 election returns shall be conducted using a random sample of
10 ten percent of the precincts in each county. The random sample
11 shall be generated by a computer program chosen by the chair of
12 each political party represented on the ballot.

13 B. A blinded supervised recount shall occur in the
14 selected precincts, which requires that those conducting the
15 recount are unaware of the official tally. The cause of errors
16 in an individual precinct shall be investigated if the official
17 tally and recount for that precinct differ by:

18 (1) at least four votes for precincts with
19 fewer than four hundred total votes; and

20 (2) at least one percent of the votes for
21 precincts with four hundred or more total votes.

22 C. The audit shall compare the total vote tallies
23 and recounts from the sampled precincts, focusing on
24 differences between them in the gap between the vote for
25 putative winner and the second-place candidate.

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1 D. Standard statistical tests shall be used that
2 account for the reductions in precision that result from
3 clustering within precincts to:

4 (1) estimate the strength of the evidence for
5 rejecting the hypothesis of no systematic difference based on
6 the tallies and the hand recounts; and

7 (2) produce a ninety percent confidence
8 interval for the statewide gap.

9 E. If, after conclusion of the first phase of
10 sampling, it remains plausible that the electoral outcome could
11 be reversed through recounts, the state shall conduct
12 additional random sampling of precincts in a number to be
13 determined by statistical sampling calculations, to be likely
14 sufficient to resolve the inconsistency. If agreement on this
15 number cannot be agreed upon prospectively, then all precincts
16 shall be recounted by hand.

17 F. If the audit shows uncorrectable errors above
18 two percent of the statewide vote, or shows substantial
19 disenfranchisement in any single precinct, the election shall
20 be reheld in the appropriate precincts, counties or statewide.

21 G. If the margin of victory in any race is one
22 percent or less, a full hand recount of that race shall
23 automatically be triggered at the expense of the governmental
24 district."

25 Section 7. A new section of the Election Code is enacted

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1 to read:

2 "[NEW MATERIAL] ELECTION COMMISSION--CREATED--DUTIES.--

3 A. The "election commission" is created. The
4 commission is composed of the following ex-officio members or
5 their designees and public members:

6 (1) the secretary of state, who shall be the
7 chair of the commission;

8 (2) the attorney general;

9 (3) the chief justice of the supreme court;

10 (4) the executive director of the New Mexico
11 association of counties; and

12 (5) three nonpartisan public members
13 appointed by the governor and confirmed by the senate:

14 (a) one of whom is an expert in
15 statistics; and

16 (b) two of whom represent different
17 nonpartisan voter information or education organizations.

18 B. The commission shall meet after each statewide
19 election. The affirmative vote of at least a majority of the
20 members shall be necessary for an action to be taken by the
21 commission.

22 C. Each public member of the commission appointed
23 by the governor shall be appointed to a four-year term. To
24 provide for staggered terms, two of the initially
25 governor-appointed public members shall be appointed for terms

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1 of two years and one member for a term of four years.
2 Thereafter, all governor-appointed members shall be appointed
3 for four-year terms. Vacancies shall be filled by appointment
4 by the governor for the remainder of the unexpired term.
5 Appointed members may be removed only for incompetence, neglect
6 of duty or malfeasance in office.

7 D. Public members of the board shall be reimbursed
8 for attending meetings of the board as provided for nonsalaried
9 public officers in the Per Diem and Mileage Act and shall
10 receive no other compensation, perquisite or allowance.

11 E. Public members of the board are appointed public
12 officials of the state while carrying out the duties and
13 activities of the commission.

14 F. The commission shall:

15 (1) establish explicit criteria for electoral
16 quality;

17 (2) following each election, in a time-frame
18 consistent with identifying errors prior to certification,
19 create and disseminate public-use, precinct-level, analytic
20 files;

21 (3) conduct routine quality audits and publish
22 regularly scheduled, standard reports from those audits;

23 (4) examine the possibility that
24 disenfranchisement rates are correlated with race or income;

25 (5) when evidence merits, share its findings

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1 with prosecutors;

2 (6) certify the election recount by a
3 unanimous vote;

4 (7) certify the results of the audit; and

5 (8) force a recount of the results in any
6 questionable precinct, county or race, or if a recount already
7 occurred, call for a new election in the problem areas."

8 Section 8. Section 1-2-4 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 25, as amended) is amended to read:

10 "1-2-4. SECRETARY OF STATE--INSTRUCTIONS TO PRECINCT
11 BOARDS, OBSERVERS AND CHALLENGERS.--

12 A. The secretary of state shall provide written
13 instructions for the precinct board, which shall include a
14 brief nontechnical explanation of their duties as required by
15 the Election Code.

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

19 C. Written instructions shall be made available in
20 each place observers or challengers are allowed to be present."

21 Section 9. Section 1-2-12 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 32, as amended) is amended to read:

23 "1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--
24 MULTIPARTISAN.--

25 A. When absentee ballots are counted, the precinct

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1 board shall consist of:

2 (1) [~~a~~] two presiding [~~judge~~] judges who shall
3 be of different political parties;

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

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

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

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

15 (1) [~~a~~] two presiding [~~judge~~] judges who shall
16 be of different political parties;

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

19 (3) one election clerk [~~who shall be of a~~
20 ~~different political party than the presiding judge~~].

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

23 (1) [~~a~~] two presiding [~~judge~~] judges who shall
24 be of different political parties;

25 (2) two election judges who shall be of

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1 different political parties; and

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

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

6 (1) [~~a~~] two presiding [~~judge~~] judges who shall
7 be of different political parties;

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

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

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

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

23 Section 10. Section 1-9-5 NMSA 1978 (being Laws 1969,
24 Chapter 240, Section 188, as amended) is amended to read:

25 "1-9-5. REQUIREMENT TO PURCHASE AND USE VOTING

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1 SYSTEMS.--

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

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

9 C. At least one additional voting system shall be
10 provided in such precinct for every [~~six~~] four hundred
11 registered voters in that precinct.

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

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

25 Section 11. Section 1-11-8 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 218, as amended) is amended to read:

2 "1-11-8. VOTING MACHINES--NOTICE OF TESTING AND
3 SEALING.--

4 A. Before testing and preparing any type of voting
5 machine for an election, the county clerk shall send written
6 notice to the county chairman of each political party having a
7 candidate on the ballot in the election. The notice shall
8 state the times when and places where the voting machines will
9 be prepared.

10 B. Party and organization representatives and
11 candidates may be present at the testing, preparation,
12 inspection and sealing of the voting machines to insure
13 compliance with the Election Code."

14 Section 12. Section 1-13-2 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 304, as amended) is amended to read:

16 "1-13-2. POST-ELECTION DUTIES--MISSING RETURNS.--

17 A. If at the time the county canvassing board meets
18 it appears that a precinct board has not delivered the election
19 returns to the county clerk, the county canvassing board shall
20 immediately issue a summons to bring before it the delinquent
21 precinct board together with the missing election returns. The
22 summons shall be served by the sheriff, without cost to the
23 county, and the members of the precinct board shall not be paid
24 for their service on election day.

25 B. If within [~~ten~~] eighteen days after the date of

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1 the election the secretary of state has not received the
2 election returns of any precinct, the secretary of state may
3 send a special messenger to the county and precinct to secure
4 and convey the missing returns to the secretary of state."

5 Section 13. Section 1-13-13 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 316, as amended) is amended to read:

7 "1-13-13. POST-ELECTION DUTIES--COUNTY CANVASSING BOARD--
8 CERTIFYING RESULTS.--

9 A. The county canvassing board shall complete the
10 canvass of the returns and declare the results within [~~ten~~]
11 eighteen days from the date of the election.

12 B. On the [~~thirty-first~~] thirty-sixth day after any
13 primary, general or district special election, the county
14 canvassing board shall issue to those candidates entitled by
15 law election certificates, or certificate of nomination in the
16 case of the primary election, to all county officers,
17 magistrates and to members of the legislature elected from
18 districts wholly within the county. In addition, the county
19 canvassing board shall declare the results, immediately after
20 completion of the canvass, of the election and of all questions
21 affecting only the county.

22 C. The county canvassing board, immediately after
23 completion of the canvass, shall also certify to the state
24 canvassing board the number of votes cast for all other
25 candidates and questions respectively and shall immediately

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1 deliver to the county chairman of each political party that
2 participated in the election a certificate showing the total
3 number of votes cast for each candidate in the election in the
4 county."

5 Section 14. Section 1-13-15 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 318, as amended) is amended to read:

7 "1-13-15. POST-ELECTION DUTIES--STATE CANVASS.--The state
8 canvassing board shall meet in the state capitol on the [~~third~~]
9 fifth Tuesday after each election and proceed to canvass and
10 declare the results of the election or nomination of each
11 candidate voted upon by the entire state and by the voters of
12 more than one county. The state canvassing board shall also
13 canvass and declare the result of the vote on any
14 constitutional amendment or any question voted upon by the
15 voters of more than one county. Upon the completion of the
16 state canvass, the secretary of state shall notify each county
17 clerk of that fact."

18 Section 15. Section 1-13-16 NMSA 1978 (being Laws 1969,
19 Chapter 240, Section 319, as amended) is amended to read:

20 "1-13-16. POST-ELECTION DUTIES--STATE CANVASS METHOD.--

21 A. The state canvass shall be made from the
22 election returns transmitted directly to the secretary of state
23 from each of the precinct boards and, in the case of candidates
24 voted upon by a district composed of two or more counties, from
25 the certificates transmitted by the county canvassing boards.

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