

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR THE PURCHASE, STORAGE, CUSTODY, DISPOSAL AND MAINTENANCE OF VOTING SYSTEM RECORDS FOR VOTING SYSTEMS PURCHASED IN 2006 AND AFTER; PROVIDING FOR CERTIFICATION PROCEDURES FOR VOTING SYSTEMS; CREATING A VOTING SYSTEM CERTIFICATION COMMITTEE; PROVIDING FOR VOTING SYSTEM STANDARDS; AMENDING, REPEALING, RECOMPILING AND ENACTING SECTIONS OF THE ELECTION CODE; DECLARING AN EMERGENCY.

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:

"VOTING SYSTEMS RECORDS.--For each certified voting system purchased in 2006 and after, including any separate component, the secretary of state shall maintain records of the voting system and any component, including:

- A. a description of each voting system and any of its components;
- B. its serial number or other identification number;
- C. the name of the vendor, the titleholder and the acquisition date;
- D. its cost;
- E. the percentage of federal participation covering the cost of acquisition;

F. its location, use and condition; and

G. its ultimate disposition, including the date of disposal and sale price."

Section 2. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--AUTHORITY OF THE SECRETARY OF STATE TO RECERTIFY AND DECERTIFY.--

A. Each voting system certified for use in the state shall be reviewed for recertification by the secretary of state during the year following a presidential election. Tests and inspections conducted pursuant to this section shall begin no later than June 1 and shall follow the procedures in Section 1-9-14 NMSA 1978.

B. If at any time the secretary of state becomes aware that a voting system certified for use in this state does not comply with all requirements in the Election Code or meet federal election standards, the secretary of state shall undertake an investigation to determine if the voting system should continue to be certified for use in the state. Tests and inspections conducted pursuant to this section shall commence upon the order of the secretary of state and shall follow the procedures in Section 1-9-14 NMSA 1978. A voting system that does not comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance

commission shall be decertified for use in this state."

Section 3. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--VOTING SYSTEM CERTIFICATION COMMITTEE--MEMBERS.--

A. The "voting system certification committee" is created. The committee shall review written test reports and the findings of the secretary of state on the certification, recertification and decertification of voting systems for use in elections in the state.

B. The voting system certification committee shall be composed of:

(1) the secretary of information technology or the secretary's designee from within the department of information technology; and

(2) four additional members as follows:

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

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

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

(d) one member appointed by the minority leader of the house of representatives.

C. The four additional members appointed pursuant

to Paragraph (2) of Subsection B of this section shall be county clerks or their chief deputies or other persons knowledgeable of elections in this state. Members shall be appointed no later than May 1 of each even-numbered year for terms of two years. Vacancies shall be filled by the original appointing authority.

D. The members of the committee shall select a committee member to serve as chair of the committee. No person who is currently or has been within the previous twelve months an employee or contractor of a voting machine vendor or the office of the secretary of state may serve as a member of the committee. Members of the committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act.

E. All meetings of the voting system certification committee shall be open meetings held in accordance with the Open Meetings Act. All reports and other records that are used, created, received, maintained or held by or on behalf of the voting system certification committee shall be open to public inspection pursuant to the Inspection of Public Records Act."

Section 4. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--STORAGE--CUSTODY AND MAINTENANCE--
AUTHORITY TO ENFORCE.--

A. The secretary of state shall prescribe by rule promulgated pursuant to the provisions of the State Rules Act specifications for the proper storage of voting systems.

B. Voting systems shall be held in the custody of the county that uses the voting systems. All voting systems shall be properly stored pursuant to specifications promulgated by the secretary of state. The board of county commissioners shall be responsible for the costs of properly storing voting systems in custody of the county.

C. The secretary of state may pay from the voting system revolving fund the costs of all hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections.

D. If the secretary of state becomes aware that state- or county-owned voting systems in the custody of a county are not being stored pursuant to specifications promulgated by the secretary of state, the secretary of state may take action as is deemed appropriate to protect the voting equipment. Such action may include requesting a court to order the county to implement the specifications promulgated by the secretary of state or the secretary of state taking immediate physical control of the voting systems until the county has complied with the storage specifications."

Section 5. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--TECHNICAL REQUIREMENTS.--Voting systems certified for use in state elections shall:

A. have a unique embedded internal serial number for audit purposes;

B. be supplied with a dust- and moisture-proof cover for transportation and storage purposes;

C. if the net weight of the system, or aggregate of voting device parts, is over twenty pounds, have self-contained wheels so that the system can be easily rolled by one person on rough pavement and can roll through a standard thirty-inch door frame;

D. be a stand-alone, non-networked election system such that all pre-election, election day and post-election events and activities can be recorded and retained in each device;

E. employ scalable technology allowing easy enhancements that meet United States election assistance commission standards and state law;

F. have ancillary equipment, such as printers, power sources, microprocessors and switch and indicator matrices, that is installed internally or is modular and transportable;

G. display publicly the number of ballots processed;

H. be able to print:

(1) an alphanumeric printout of the contests, candidates and vote totals when the polls are opened so that the poll workers can verify that the counters for each candidate are on zero;

(2) an alphanumeric printout of the contests, candidates and vote totals at the close of the polls, which printouts shall contain the system serial number and public counter total; and

(3) as many copies of the alphanumeric printouts as necessary to satisfy state law; and

I. include a feature to allow reports to be sent to an electronic data file."

Section 6. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--OPERATIONAL REQUIREMENTS.--Voting systems certified for use in state elections shall:

A. have internal application software that is specifically designed and engineered for the election application;

B. include comprehensive diagnostics designed to ensure that failures do not go undetected;

C. have a real-time clock capable of recording and documenting the total time polls are opened; and

D. have a self-contained, internal backup battery that powers all components of the system that are powered by

alternating current power; and, in the event of a power outage in the polling place:

(1) the self-contained, internal backup battery power shall engage with no disruption of operation for at least two hours and with no loss of data; and

(2) the system shall maintain all vote totals, public counter totals and the internal clock time in the event that the main power and battery backup power fail."

Section 7. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--MEMORY--REMOVABLE STORAGE MEDIA DEVICE --REQUIREMENTS.--Voting systems certified for use in state elections shall:

A. be programmable with removable storage media devices;

B. contain ballot control information, summary vote totals, maintenance logs and operator logs on the removable storage media device;

C. ensure that the votes stored on the removable storage media device accurately represent the actual votes cast;

D. be designed so that no executable code can be launched from random access memory;

E. have any operating system software stored in nonvolatile memory, which shall include internal quality

checks such as parity or error detection and correction codes, and which software shall include comprehensive diagnostics to ensure that failures do not go undetected;

F. allow for pre-election testing of the ballot control logic and accuracy, with results stored in the memory that is used on election day, and shall be capable of printing a zero-results printout prior to these tests and a results printout after the test;

G. have internal audit trail capability such that all pre-election, election day and post-election events shall be stored, recorded and recovered in an easy-to-read printed form and be retained within memory that does not require external power for memory retention;

H. possess the capability of remote transmission of election results to a central location only by reading the removable storage media devices once they have been removed from the tabulation device after the poll closing sequence has been completed; and

I. prevent data from being altered or destroyed by report generation or by the transmission of results."

Section 8. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"VOTING SYSTEMS--BALLOT HANDLING AND PROCESSING REQUIREMENTS.--Voting systems certified for use in state elections shall:

A. accept a ballot that is a minimum of six inches wide and a maximum of twenty-four inches long, in dual columns and printed on both sides;

B. accept a ballot in any orientation when inserted by a voter;

C. have the capability to reject a ballot on which a voter has made more than the allowable number of selections in any contest;

D. be designed to accommodate the maximum number of ballot styles or ballot variations encountered in the largest New Mexico election jurisdiction; and

E. be able to read a single ballot with at least four hundred twenty voting positions."

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

"VOTING SYSTEMS--SOURCE CODE--ESCROW.--

As a condition of initial certification and continued certification, the source code that operates a voting system shall be placed in escrow and be accessible to the state of New Mexico in the event the manufacturer ceases to do business or ceases to support the voting system."

Section 10. Section 1-9-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 184, as amended) is amended to read:

"1-9-1. SECRETARY OF STATE--DUTIES--VOTING SYSTEM DEFINED.--

A. The secretary of state shall study, examine and certify all voting systems used in elections for public office in New Mexico. The secretary of state shall maintain a current list of certified voting systems and copies of filed testing and evaluation reports accessible by the public on the secretary of state's web site. Only voting systems certified by the secretary of state and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code shall be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes; 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, including any type of system that is designed to print or mark ballots at a polling location."

Section 11. Section 1-9-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 188, as amended) is amended to read:

"1-9-5. REQUIREMENT TO USE VOTING SYSTEMS.--

A. Certified voting systems shall be used in all polling locations in all statewide elections.

B. The secretary of state shall provide to the

county clerk of each county at least one voting system for use in each polling location in the general and primary elections.

C. The county clerk shall ensure that an adequate number of voting booths are provided to ensure that voters in each polling location may cast their ballots in secret."

Section 12. Section 1-9-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 190, as amended) is amended to read:

"1-9-7. VOTING SYSTEMS--ACQUISITION.--

A. The secretary of state shall provide to the county clerk of each county a sufficient number of voting systems as required by the Election Code for the conduct of primary and general elections.

B. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting systems. No less than ninety days prior to each primary and general election, the board of county commissioners of each county may make application to the state board of finance for any additional voting systems to be acquired by a county in excess of the number of voting systems required by the Election Code for the conduct of primary and general elections.

C. The additional voting systems shall be of a type certified by the secretary of state. They shall be purchased by the state board of finance. The cost of the voting systems, including all transportation costs, shall be

paid out of the voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems.

D. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting system shall have a warranty equal to the warranty required of a new voting system."

Section 13. Section 1-9-7.1 NMSA 1978 (being Laws 2005, Chapter 270, Section 56, as amended) is amended to read:

"1-9-7.1. VOTING SYSTEM--USE OF PAPER BALLOT.--

A. All voting systems used in elections covered by the Election Code shall use a paper ballot on which the voter physically or electronically marks the voter's choices on the ballot itself.

B. The secretary of state shall purchase the paper ballots for all counties to use for primary and general elections. If a system designed to print ballots at a polling location is certified and the voting system certification committee finds that its use in a polling place would result in cost savings, the secretary of state shall acquire such systems and paper ballot stock in lieu of fully preprinted paper ballots for those polling places where cost savings would be realized.

C. The paper ballot shall be used in a recount proceeding, and in case of a discrepancy, the paper ballot

shall be considered the true and correct record of the voter's choices."

Section 14. Section 1-9-7.2 NMSA 1978 (being Laws 2005, Chapter 270, Section 57) is amended to read:

"1-9-7.2. VOTING SYSTEMS--TESTING OF PREVIOUSLY CERTIFIED SYSTEMS.--The secretary of state may voluntarily test and certify voting systems without an application by the manufacturer if the system has been previously certified by the United States election assistance commission. Tests and inspections conducted pursuant to this section shall follow the procedures in Section 1-9-14 NMSA 1978 and shall be completed within six months of the date on which the secretary of state orders testing to begin; provided, however, if the manufacturer has not applied for certification of that voting system, the manufacturer shall not be required to pay for the costs of testing and certification."

Section 15. Section 1-9-12 NMSA 1978 (being Laws 1975, Chapter 255, Section 120, as amended) is amended to read:

"1-9-12. CARE AND CUSTODY OF REMOVABLE STORAGE MEDIA DEVICES--RESPONSIBILITY FOR TRANSPORTATION OF VOTING SYSTEMS--RESPONSIBILITY FOR SECURITY AND PROGRAMMING--CHARGE FOR SUCH TRANSPORTATION OR PROGRAMMING.--

A. The county clerk shall be responsible for transporting all voting systems to and from polling places.

B. The county clerk shall have care and custody of

and be responsible for the removable storage media devices for all voting systems in the custody of the county and shall be responsible for the programming of the systems.

C. When voting systems are used in any election, the county clerk shall assure the security of the removable storage media devices at all times during the period the voting systems are being programmed and until the votes recorded on the removable storage media devices are cleared pursuant to Section 1-13-21 NMSA 1978. The county clerk may give written authorization in advance to program the removable storage media devices outside of the county seat, and a copy of the authorization with the programmer named therein shall be kept on file in the county clerk's office subject to public inspection.

D. Failure of the county clerk to assure the security of voting system removable storage media devices in the county clerk's custody shall constitute a neglect to discharge the duties of the clerk's office.

E. A reasonable fee may be charged by the county for the transportation and programming of the voting systems when used pursuant to Section 1-9-6 NMSA 1978, but in no case shall such fee exceed the actual cost to the county."

Section 16. Section 1-9-13 NMSA 1978 (being Laws 1975, Chapter 255, Section 121, as amended) is amended to read:

"1-9-13. VOTING SYSTEM TECHNICIANS.--

A. Voting system technicians shall be trained and certified by the secretary of state as to their adequacy of training and expertise on voting systems certified for use in the state.

B. The secretary of state shall train and recertify voting system technicians prior to each primary election.

C. For purposes of this section, "voting system technician" means any person who is trained and certified to program, inspect, properly store and troubleshoot voting systems.

D. The secretary of state shall adopt rules regulating the scope of training provided to voting system technicians to ensure that voting system warranties are not invalidated and that equipment owned by the state is protected."

Section 17. Section 1-9-14 NMSA 1978 (being Laws 1983, Chapter 226, Section 1, as amended) is amended to read:

"1-9-14. VOTING SYSTEMS--AUTHORITY OF THE SECRETARY OF STATE TO TEST--CERTIFICATION.--

A. The secretary of state shall provide for the testing and evaluation of voting systems designed for the purpose of recording and tabulating votes within polling places in New Mexico. All voting systems certified for use in the state shall be tested by an independent authority and

shall comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

B. Any person who has a voting system that is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have the equipment examined and tested for certification. At the time application is made for initial certification, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the voting system to ensure that it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of voting systems and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more polling places in any state or local government election, provided that such field tests shall be conducted at no cost to the state or any local government.

These tests and inspections shall be completed within six months of the date of application.

C. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall file that report, together with the written test reports, in the office of the secretary of state and post them on the secretary of state's web site. The secretary of state shall accept public comment during the twenty-one days following the filing of the written report.

D. Following the period of public comment, the secretary of state shall submit the filed reports and any public comments for consideration by the voting system certification committee. The voting system certification committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

E. The voting system certification committee shall recommend that a voting system be certified for use in the state only if it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

F. If the voting system certification committee report finds that the voting system does not comply with all

requirements in the Election Code or does not meet federal election standards, the secretary of state shall allow thirty days for an appeal of the findings to be filed or for the deficiencies to be corrected, following which the secretary of state shall report back to the voting system certification committee with a written final report.

G. The voting system certification committee shall reconvene to consider the final report of the secretary of state and shall make final recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

H. If the voting system certification committee recommends that the voting system is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the equipment for use in elections in this state.

I. If the voting system certification committee does not recommend that the voting system for recording and tabulating votes is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall deny the application or decertify the equipment for use in elections in this state."

Section 18. Section 1-9-17 NMSA 1978 (being Laws 1985, Chapter 207, Section 16, as amended) is amended to read:

"1-9-17. ADDITIONAL VOTING SYSTEMS--STATE BOARD OF

FINANCE--LEASE-PURCHASE CONTRACT--TERMS.--

A. The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting systems and the necessary support equipment upon receipt of the application of the board of county commissioners pursuant to Section 1-9-7 NMSA 1978.

B. The lease-purchase contract shall include, but not be limited to, the following terms:

(1) the county agrees to purchase from the state board of finance the specified number of voting systems and the necessary support equipment;

(2) the county will pay for the cost of the systems and support equipment, including reimbursement for costs of transportation;

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

(4) the care, custody and proper storage of the systems and support equipment pursuant to specifications issued by the secretary of state is the responsibility of the county clerk; and

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

Section 19. Section 1-9-17.1 NMSA 1978 (being Laws 2009, Chapter 173, Section 1) is amended to read:

"1-9-17.1. VOTING SYSTEMS--RENEGOTIATION OF LEASE-

PURCHASE CONTRACT--DISPOSITION OF VOTING SYSTEMS.--

A. A lease-purchase contract for a voting system entered into between the state board of finance and a county pursuant to Section 1-9-17 NMSA 1978, after a renegotiation pursuant to Paragraph (5) of Subsection B of that section, may include provisions providing that, upon the return of physical control of the voting systems to the state board of finance, the contract shall be terminated and no additional payments from the county shall be due. The state board of finance may dispose of voting systems returned pursuant to this subsection in any manner that is consistent with the interests of the state.

B. Upon application by the board of county commissioners, the secretary of state shall dispose of voting systems and support equipment purchased after January 1, 2007 by the board of county commissioners. The application shall include a provision for the transfer of ownership in the voting systems to the state without fee or compensation to the county."

Section 20. Section 1-9-19 NMSA 1978 (being Laws 1985, Chapter 207, Section 18, as amended) is amended to read:

"1-9-19. VOTING SYSTEM REVOLVING FUND.--

A. The "voting system revolving fund" is created. The voting system revolving fund may be used:

- (1) by the secretary of state to pay for

hardware, software, firmware, maintenance and support for voting systems, whether state- or county-owned, certified for use in state elections; and

(2) by the counties to finance, by contract, the purchase of voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978; provided that no expenditure shall be made pursuant to this paragraph if it would result in a fund balance of less than one million dollars (\$1,000,000).

B. The voting system revolving fund may be expended upon vouchers signed by the secretary of finance and administration.

C. If at the end of a fiscal year the voting system revolving fund exceeds six million five hundred thousand dollars (\$6,500,000), the amount in excess of six million five hundred thousand dollars (\$6,500,000) shall revert to the general fund."

Section 21. TEMPORARY PROVISION--RECOMPILATION.--
Section 1-9-4.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 34, as amended) shall be recompiled as part of Chapter 1, Article 1 NMSA 1978.

Section 22. REPEAL.--Sections 1-9-2, 1-9-4.1, 1-9-8, 1-9-15 and 1-9-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 185, Laws 2001, Chapter 233, Section 15, Laws 1969, Chapter 240, Section 191 and Laws 1985, Chapter 207, Sections

14 and 15, as amended) are repealed.

Section 23. EFFECTIVE DATE.--The effective date of the provisions of Section 13 of this act is January 1, 2011.

Section 24. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
