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SENATE BILL 318

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION OF
THE ACCURACY OF RANDOMLY SELECTED VOTING SYSTEMS; PRESCRIBING
PROCEDURES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

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

Section 1. A new section of the Election Code is enacted
to read:

"[NEW MATERIAL] POST-ELECTION DUTIES--RANDOM VOTING SYSTEM
CHECK.--

A. For each general election, the state auditor
shall contract with an election auditor to oversee a random
voting system check of precinct electronic vote tabulators,
alternate voting location electronic vote tabulators and absent
voter precinct electronic vote tabulators. The election

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1 auditor shall select in a public drawing a random sample of
2 precinct electronic vote tabulators, alternate voting location
3 electronic vote tabulators and batches of absentee ballots from
4 absent voter precincts as soon as practicable after the
5 completion of the county canvasses. The size of the random
6 sample shall be determined so that it will ensure, with at
7 least a ninety percent probability, that faulty tabulators
8 would be detected if they would change the outcome of the
9 election for a selected office. The election auditor may
10 choose to conduct a voting system check of additional
11 electronic vote tabulators if initial results indicate more
12 auditing is necessary.

13 B. The election auditor shall notify the
14 appropriate county clerks which precinct electronic vote
15 tabulators and alternate voting location electronic voter
16 tabulators are to be checked and which batches of ballots from
17 absent voter precincts are to be included in the random voting
18 system check.

19 C. The election auditor shall direct the
20 appropriate county clerks to compare the vote totals for
21 candidates for selected offices from the randomly selected
22 precinct level electronic vote tabulators and alternate voting
23 location electronic vote tabulators with the respective vote
24 totals of a hand recount of the paper ballots counted by those
25 electronic vote tabulators in accordance with state auditor

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1 rules.

2 D. For electronic vote tabulators used in absentee
3 ballot precincts, county clerks shall divide absentee ballots
4 into batches. Each batch shall contain approximately the same
5 number of ballots as an estimate of the county average for the
6 number of ballots voted in the county's precincts. The ballots
7 in the batches need not be associated with voters from any
8 particular precinct. As the ballots in a batch are tabulated
9 and recorded, each batch shall be assigned a unique
10 identification number in the format provided by the secretary
11 of state. Immediately after tabulating the ballots comprising
12 each batch, a cumulative summary vote tally report bearing the
13 unique identification number of the batch and containing the
14 sum of the vote totals of the batch and all previously counted
15 batches in the election shall be recorded. The election
16 auditor shall use the reports to determine the electronic vote
17 tally for each batch. The election auditor shall first compare
18 the vote tallies in the final cumulative report to the official
19 results announced by the county and resolve any discrepancies,
20 and then include all the batches from each county in the random
21 selection process and, if selected, cause them to be audited in
22 the same manner provided herein for precincts, except that the
23 hand count shall be compared to the vote tally derived from the
24 cumulative reports. The batches shall be included with the
25 precincts in the random selection process for precincts and

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1 batches to be audited. The vote tallies of the batches
2 selected for auditing shall be compared to hand counts of the
3 batches.

4 E. For the purposes of this section, "selected
5 offices" means the offices of governor or president, the
6 statewide elective office for which the winning candidate won
7 by the narrowest margin of all candidates for statewide
8 elective office and all federal elective offices on the ballot.

9 F. Based on the results of the electronic vote
10 tabulator audit and any other auditing results, the election
11 auditor shall determine whether or not there is a significant
12 possibility that a full hand recount of the votes for any of
13 the selected offices would change the outcome of the election
14 and report the determination to the state auditor, secretary of
15 state and state canvassing board, which shall make the report
16 available to the public.

17 G. Persons designated as county canvass observers
18 shall be notified by the election auditor of, and may observe,
19 the hand recounts required in this section. Observers shall
20 comply with the procedures governing county canvass observers
21 as provided in Section 1-2-31 NMSA 1978.

22 H. All costs of a random voting system check shall
23 be paid by the state. The secretary of state shall reimburse a
24 county for expenses incurred in conducting a random voting
25 system check."

1 Section 2. A new section of the Audit Act is enacted to
2 read:

3 "[NEW MATERIAL] GENERAL ELECTION AUDIT.--For each general
4 election, the state auditor shall contract with an election
5 auditor to conduct a post-election evaluation of the accuracy
6 of randomly selected voting systems in accordance with the
7 Election Code."

8 Section 3. APPROPRIATION.--One hundred thousand dollars
9 (\$100,000) is appropriated from the general fund to the office
10 of the secretary of state for expenditure in fiscal year 2009
11 for reimbursing counties for the costs incurred in conducting
12 automatic recounts. Any unexpended or unencumbered balance
13 remaining at the end of fiscal year 2009 shall revert to the
14 general fund.

15 Section 4. REPEAL.--Section 1-14-13.1 NMSA 1978 (being
16 Laws 2005, Chapter 270, Section 75) is repealed.

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