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

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

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

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rules.

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

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

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

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

H. All costs of a random voting system check shall
be paid by the state. The secretary of state shall reimburse a
county for expenses incurred in conducting a random voting
system check."
Section 2. A new section of the Audit Act is enacted to read:

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

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

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

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