

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 21 VOTING SYSTEM ACQUISITION

1.10.21.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM
[1.10.21.1 NMAC - N, 8-31-2000]

1.10.21.2 SCOPE: All voting systems and necessary support equipment purchased for use in elections for public office in New Mexico.
[1.10.21.2 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.3 STATUTORY AUTHORITY:

A. Section 1-9-5 (B) NMSA 1978 provides that 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.

B. Section 1-9-7 NMSA 1978 provides:

(1) 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.

(2) 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,

(3) 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.

C. Section 1-9-17 NMSA 1978 provides:

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

(2) The lease-purchase contract shall include, but not be limited to, the following terms:

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

(b) The county will pay for the cost of the systems and support equipment including reimbursement for costs of transportation.

(c) The term of the lease-purchase contract shall not exceed ten years.

(d) The care, custody and proper storage of such systems and support equipment pursuant to the specifications issued by the secretary of state are the responsibility of the county clerk.

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

D. Section 1-9-18 NMSA 1978 provides:

(1) 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 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.

(2) 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 voting systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the voting system revolving fund if the voting systems were originally purchased with money from the voting system revolving fund.

E. Section 1-9-19 NMSA 1978 creates the voting system revolving fund which may be used:

(1) by the secretary of state to pay for hardware, software, firmware, maintenance and support of 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 for this purpose if it would result in a fund balance of less than one million dollars.
[1.10.21.3 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.4 DURATION: Permanent.
[1.10.21.4 NMAC - N, 8-31-2000]

1.10.21.5 EFFECTIVE DATE: August 31, 2000, unless a later date is cited at the end of a section.
[1.10.21.5 NMAC - N, 8-31-2000]

1.10.21.6 OBJECTIVE: This rule governs all acquisitions of voting systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections by counties and sets forth the procedures that must be followed in such acquisitions.
[1.10.21.6 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.7 DEFINITIONS:

- A. "Board" means state board of finance.
 - B. "Clerk" means the clerk acting on behalf of a county acquiring or selling a voting system.
 - C. "Fund" means the voting system revolving fund.
 - D. "Lease-purchase contract" means the contract executed between the board and the county for the purchase of voting systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections as further outlined in Paragraph (2) of Subsection C of 1.10.21.3 NMAC.
 - E. "Secretary" means secretary of state.
 - F. "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, and also including any type of system that is designed to print or to mark ballots at a polling location; 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.
- [1.10.21.7 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.8 APPROVAL OF ADDITIONAL VOTING SYSTEM PURCHASES:

- A. The clerk must select voting systems to be acquired in addition to the number required by the Election Code for the conduct of primary and general elections from a list of voting systems certified by the secretary for use in elections for public office in New Mexico. The county commissioners must adopt a resolution, passed by a majority of the commission, approving the purchase of additional voting systems and authorizing the county commission chairperson to enter into a lease-purchase contract with the board for that purchase.
- B. The clerk must submit a letter of request to purchase additional voting systems to the secretary, along with the resolution adopted by the county commission. If the purchase is from another county, both the county selling and the county acquiring the additional voting systems are to submit a letter indicating the serial numbers and attaching the resolution or a copy of the signed minutes indicating approval of sale (seller) or purchase (acquirer). All letters of requests must include:
 - (1) number of voting systems to be purchased and the reason for purchase;
 - (2) manufacturer and model of voting systems to be purchased (indicate if new or previously owned);
 - (3) price per voting system and total amount of purchase;
 - (4) indication of desired term of the lease-purchase contract; counties with sufficient funds to acquire voting systems must elect to have a thirty-day term for the lease-purchase contract; counties requiring financing may elect to have the term of the lease-purchase contract be up to ten years;
 - (5) total number of voting systems the county currently has;
 - (6) the number of voting systems the county is required to have under New Mexico's Election Code.
- C. The secretary must submit a written recommendation to the board to be considered at the board's next regularly scheduled monthly meeting. In addition to items in Subsection B of 1.10.21.8 NMAC as stated above, the recommendation must include:
 - (1) verification that vendors used for purchases are listed on the state procurement list;
 - (2) verification that the manufacturer and the model of voting systems have been certified by the secretary for use in elections for public office in New Mexico;

(3) verification that the voting systems will be acquired pursuant to a competitive bid process in accordance with the provisions of the New Mexico Procurement Code;

(4) verification that the voting systems to be acquired are in addition to the number required by the Election Code for the conduct of primary and general elections.

D. Upon receiving recommendations from the secretary, the board staff shall submit them for review to the local government division to ascertain ability to make the payments called for by the lease-purchase contract prior to submission to the board for action.

E. The board or its staff may request any other supplemental information to aid in its consideration of the request.

[1.10.21.8 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.9 ACQUISITION OF ADDITIONAL VOTING SYSTEMS:

A. Upon approval by the board to acquire voting systems in addition to the number required by the Election Code for the conduct of primary and general elections, board staff will send the county a lease-purchase contract to be signed by the county commission chairperson. A lease-purchase contract must be entered into regardless of the term of the contract and shall include, but not be limited to, the following terms set out in Paragraph (2) of Subsection C of 1.10.21.3 NMAC.

B. Upon receipt of the signed lease-purchase contract, board staff will order the additional voting systems and send copies of the purchase order and the signed lease-purchase contract to the county.

C. In no event shall the county purchase additional voting systems directly from vendors.

D. Once additional voting systems are delivered, the county shall promptly notify the board staff and the secretary. The secretary will inspect the voting systems and notify board staff by way of the "delivery confirmation of voting systems" form.

E. Board staff will then submit payment to the vendor and send a copy of the voucher to the county along with a payment schedule. Since voting systems are purchased by the fund, payments by the county must adhere to the conditions set out in the lease-purchase contract. Annual lease-purchase contract payments must be received by December 31 of each year unless otherwise specified. Upon receipt of final payment, title to the voting systems is transferred from the board to the county.

[1.10.21.9 NMAC - N, 8-31-2000; A-10-17-2011]

History of 1.10.21 NMAC: [RESERVED]