SENATE BILL 48

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Pat Woods

AN ACT

RELATING TO ELECTIONS; DIRECTING THE SECRETARY OF STATE TO PROVIDE COUNTY CLERKS WITH FUNDS IN THE BUSINESS REPLY MAIL ACCOUNT; ELIMINATING ELECTION DAY VOTING LOCATION VOTER REGISTRATION; ADJUSTING THE TIME FRAME FOR PROCESSING REGISTRATIONS AFTER AN ELECTION; REVISING REQUIREMENTS FOR RETURNING AND HANDLING MAILED BALLOTS; PRESCRIBING ELECTION DAY WORKING HOURS FOR THE ABSENT VOTER ELECTION BOARD; ELIMINATING THIRD-PARTY AGENTS FOR VOTER REGISTRATION AND MAILED BALLOT APPLICATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"[NEW MATERIAL] SECRETARY OF STATE--BUSINESS REPLY MAIL
ACCOUNT.--The secretary of state shall deposit sufficient funds in the business reply mail account for each county clerk to ensure delivery of all certificates of voter registration, mailed ballot applications and returned mailed ballots in each election cycle."

SECTION 2. Section 1-4-5.7 NMSA 1978 (being Laws 2019, Chapter 67, Section 1, as amended) is amended to read:

"1-4-5.7. REGISTRATION AT VOTING LOCATION PRIOR TO VOTING.--

A. Notwithstanding the provisions in Section 1-4-8 NMSA 1978 providing for the closing of registration deadline to register to vote or update a certificate of registration prior to an election, a qualified elector seeking to register to vote or update an existing certificate of registration in the state shall be allowed to do so at a voting location immediately before voting in that election after signing an affidavit under oath that the elector has not voted in the election in this state or elsewhere, and as further provided in this section.

B. During a statewide election, a qualified elector may register to vote or update an existing certificate of registration at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election;
provided that if the county clerk establishes an additional alternate voting location near the clerk's office in lieu of voting at the office of the county clerk, a qualified elector may register to vote or update an existing certificate of registration at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election.

C. During a statewide election, a qualified elector may register to vote or update an existing certificate of registration at an alternate voting location only if the county clerk has assigned a county clerk employee to be the clerk's authorized deputy to serve as a registration officer at the alternate voting location; provided that ninety days before the election, the county clerk shall post the location of each alternate voting location where a qualified elector may register to vote or update an existing certificate of registration immediately before voting.

[D. Beginning January 1, 2021 and upon the approval of the voting system certification committee, during a statewide election, a qualified elector may register to vote or update an existing certificate of registration at an election day voting location; provided that the secretary of state shall .218561.2

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establish procedures to ensure that a registration officer has an opportunity to review the information of a qualified elector who registers to vote or updates an existing certificate of registration immediately before the qualified elector votes on election day.

E. A voter whose political party affiliation on the voter's certificate of registration is with a major political party shall not be allowed to change party affiliation when updating an existing certificate of registration or registering to vote at an early voting site or polling place during a primary election.

F. During a special election, a qualified elector may register to vote or update an existing certificate of registration at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election until the last regular business day the week prior to the date of the election.

G. A qualified elector seeking to register to vote or update an existing certificate of registration immediately before voting shall provide:

(1) a New Mexico driver's license or New Mexico identification card issued through the motor vehicle division of the taxation and revenue department;

(2) any document that contains an address in
the county together with a photo identification card; or

(3) a current valid student photo identification card from a post-secondary educational institution in New Mexico accompanied by a current student fee statement that contains the student's address in the county.

[H-] G. If an early voting site [or polling place] does not have real-time access to the statewide electronic voter file, a voter desiring to update an existing certificate of registration or to register to vote shall be issued a provisional ballot.

[I-] H. No later than June 30, 2021 and upon the approval of the voting system certification committee, the secretary of state and the secretary of taxation and revenue shall develop a procedure for importing the list of eligible but unregistered persons with a driver's license or state-issued identification card into the voter registration electronic management system prior to an election to facilitate processing a new voter registration pursuant to this section."

SECTION 3. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION--LATE REGISTRATION.--For qualified electors seeking to register to vote or update an existing voter registration in the state, the following provisions shall apply:

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A. to participate in an election, the deadline to register to vote or update an existing voter registration is twenty-eight days prior to that election; provided that a qualified elector may register to vote or update an existing voter registration immediately before voting in an election at the county clerk's office, an early voting site or an alternative voting site as provided in Section 1-4-5.7 NMSA 1978;

B. the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk shall not process any certificate of registration subscribed and sworn beginning the first business day after the deadline to register to vote or update an existing voter registration before an election if the residential address on the certificate of registration indicates that the registration is for a:

(1) statewide election, within the county; or
(2) special election, within any precinct in the county in which votes may be cast in the special election;

C. between the deadline to register to vote or update an existing voter registration through the day of the election, the county clerk shall process all:

(1) new voter registrations that meet the requirements of this section;
(2) updates to existing voter registrations in .218561.2
this state that meet the requirements of this section; provided that an update to an existing registration in this state shall not be processed if the voter has requested or been sent a ballot in the election, unless the voter executes an affidavit stating that the voter has not and will not vote the ballot that was issued and the ballot register does not show that a ballot from the voter has been cast in the election; and

(3) pending cancellations of existing voter registrations in this state through the day of the election; provided that a cancellation of an existing voter registration shall not be processed if the voter has requested or been sent a ballot in the election;

D. certificates of registration and cancellations of existing voter registrations not processed pursuant to Subsection B or C of this section [shall] may be processed beginning [thirty-five days after] the Monday following an election and shall be processed beginning no later than the first business day following approval of the report of the county canvass by the county canvassing board, at which time a voter information document shall be mailed to the registrant at the address shown on the certificate of registration; provided that if there is a subsequent election scheduled at which a qualified elector or voter would be eligible to vote if the certificate of registration were processed on an earlier date, the certificate of registration for that qualified elector or
voter shall be processed by the county clerk on a day and in a manner to ensure the ability of the qualified elector or voter to vote in the subsequent election;

E. when the deadline to register to vote or update an existing voter registration prior to an election referred to in this section is a Saturday, Sunday or state holiday, registration certificates shall be accepted through the next succeeding business day for the office of the county clerk; and

F. the county clerk shall accept for filing and process any certificate of registration that is subscribed and dated on or before the deadline to register to vote or update an existing voter registration prior to an election and:

(1) received by the county clerk by the end of the last regular business day of the week for the office of the county clerk immediately following the deadline to register to vote or update an existing voter registration prior to an election;

(2) mailed and postmarked on or before the day of the deadline to register to vote or update an existing voter registration prior to any election referred to in this section; or

(3) accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978."

SECTION 4. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

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A. In a statewide election, application by a voter for a mailed ballot shall be made only on a paper form or its online equivalent. The form shall identify the applicant and contain information to establish the applicant's qualification for issuance of a mailed ballot under the Absent Voter Act; provided that only on the application form for a primary election ballot there shall be a box, space or place provided for designation of the voter's political party affiliation.

B. Each application on a paper form for a mailed ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification. When submitted by the voter, the county clerk shall accept an application for a mailed ballot pursuant to this subsection regardless of whether the application for a mailed ballot is delivered to the county clerk on paper or by electronic means. [When submitted by a third party, the county clerk shall not accept an application for a mailed ballot pursuant to this subsection if the application for a mailed ballot is delivered by electronic means.]

C. The secretary of state shall allow a voter to submit an online application for a mailed ballot through a website authorized by the secretary of state; provided that the

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voter shall have a current or expired New Mexico driver's license or state identification card issued by the motor vehicle division of the taxation and revenue department. An online request for a mailed ballot shall contain all of the information that is required for a paper form. The voter shall also provide the person's full New Mexico driver's license number or state identification card number.

D. When a voter requests a mailed ballot pursuant to this section, the voter shall mark the box associated with the following statement, which shall be included as part of the online mailed ballot request form:

"By clicking the boxes below, I swear or affirm all of the following:

[ ] I am the person whose name and identifying information is provided on this form and I desire to request a mailed ballot to vote in the state of New Mexico; and

[ ] All of the information that I have provided on this form is true and correct as of the date I am submitting this form."

E. Online applications for mailed ballots shall retain the dates of submission by the qualified elector and of acceptance by the county clerk. For purposes of deadlines contained in the Election Code, the time and date of the submission by the voter shall be considered the time and date when the application for a mailed ballot is received by the
county clerk.

F. New registrants who registered for the first time in this state by mail and at that time did not provide acceptable documentary identification as required by federal law shall be informed of the need to comply with federal identification requirements when returning the requested ballot. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

G. A person who willfully and with knowledge and intent to deceive or mislead any voter, election board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's own on a mailed ballot request form is guilty of a fourth degree felony."

SECTION 5. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. MAILED BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

(1) official inner envelopes for use in sealing the completed mailed ballot;

(2) official mailing envelopes for use in
returning the official inner envelope to the county clerk, which shall be postage-paid; provided that only the official mailing envelope for absentee ballots in a political party primary shall contain a designation of party affiliation;

(3) mailed ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in sending mailed ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of mailed ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the mailed ballot. The form shall contain the pre-printed name of the voter to whom the mailed ballot was sent and shall contain the following statement: "I have not and will not vote any other ballot in this election". The official mailing envelope shall contain a space for the voter to record the voter's [name, registration address and year of birth] signature and last four digits of the voter's social security number, which shall constitute the required voter identification. The envelope shall have a security flap to
cover this information."

SECTION 6. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MAILED BALLOTS--MANNER OF VOTING--DELIVERY METHODS.--

A. When voting a mailed ballot, the voter shall secretly mark the mailed ballot in the manner provided in the Election Code for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope under the privacy flap, which shall include [a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth] a space under the required attestation for the voter's signature and the last four digits of the voter's social security number, which shall constitute the required voter identification. No additional information shall be required of a voter to return a mailed ballot. The voter or another person authorized by law shall then return the official mailing envelope containing the voted ballot to the county clerk of the voter's county of residence. If returned by a person other than the voter, the official mailing envelope shall contain the signature, printed name and
relationship to the voter of the person returning the ballot.

B. The official mailing envelope may be returned by mail using the United States postal service. The secretary of state shall implement a free-access tracking system for each voter to be able to see the status of the voter's mailed ballot while en route to the voter as well as when returned to the county clerk.

C. The official mailing envelope may be returned using a commercial delivery service; provided that unless the secretary of state has approved the use of a specific commercial delivery service, the voter shall be responsible for the costs of delivery by means of such service.

D. The official mailing envelope may be returned in person to the office of the county clerk or to an alternate voting location, mobile alternate voting location or election day voting location.

E. The official mailing envelope may be returned by depositing the official mailing envelope in a secured container made available by the county clerk to receive voted mailed ballots for that election; provided that:

   (1) the location of the containers and the days and times the containers will be available to receive ballots are posted by the county clerk at least ninety days before a statewide election or forty-two days before a special election;

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(2) the location of a secured container is considered a polling place for purposes of electioneering too close to the polling place in violation of Section 1-20-16 NMSA 1978;

(3) all secured containers shall be monitored by video surveillance cameras and the video recorded by that system shall be retained by the county clerk as a record related to voting pursuant to the provisions of Section 1-12-69 NMSA 1978;

(4) signage at the location of a secured container shall inform voters and those dropping off ballots at the location:

(a) that it is a violation of law for any person who is not an immediate family member to collect and deliver a ballot for another person;

(b) that electioneering is prohibited within one hundred feet of the secured container; and

(c) of the dates and approximate time the ballots will be collected; and

(5) at least once a day, the county clerk or a full-time deputy county clerk shall collect the ballots from the secured containers, register the date and time stamp on each official mailing envelope and identify the location of the secured container in the ballot register."

SECTION 7. Section 1-6-10 NMSA 1978 (being Laws 1969, .218561.2
Chapter 240, Section 136, as amended) is amended to read:

"1-6-10. RECEIPT OF MAILED BALLOTS BY CLERK.--

[A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the absentee or mailed ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the proper election board, counted in the county canvass or canceled and destroyed in accordance with law.]

A. Upon receipt of a mailed ballot, the county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, remove the privacy flap to verify that the voter signed the official mailing envelope and confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration.

B. If the signature is present and the last four digits of the voter's social security number match, the county clerk shall note in the absentee ballot register the date and time of receipt and that the ballot was accepted and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board.

C. If either the voter's signature is missing or the last four digits of the voter's social security number are
not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board.

D. If the mailed ballot is rejected, the county clerk shall within one day send the voter a notice of rejection along with information regarding how the voter may cure the reason for the rejection. The determination of the county clerk to accept or reject a mailed ballot is subject to a later interposition of a challenge before the absent voter election board. In addition to existing procedures in the Election Code for qualifying a previously rejected absentee ballot after election day, a previously rejected absentee ballot may be qualified by the presiding judge and election judges of the absent voter election board before the day of the election if the ballot was rejected for the lack of a signature or missing required voter identification if the voter provides such information pursuant to procedures established by the secretary of state.

E. The county clerk shall safely keep an official mailing envelope unopened in a locked and number-sealed ballot box until the unopened official mailing envelope is delivered to the proper election board, counted in the county canvass or canceled and destroyed in accordance with law.
[B-r] F. In a statewide election, if the unopened official mailing envelope is received by the county clerk from an election board before the absent voter election board has adjourned, the unopened official mailing envelope shall be logged and transmitted to the absent voter election board to be tallied immediately. If the unopened official mailing envelope is received by the county clerk from an election board after the absent voter election board has adjourned, the unopened official mailing envelope shall be logged and transmitted to be tallied and included in the canvass report of that county for the appropriate precinct.

[G-r] G. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day.

[H-r] H. Any completed official mailing envelope received after that time shall not be qualified or opened but shall be preserved by the county clerk for the applicable retention period provided in Section 1-12-69 NMSA 1978. The county clerk shall report the number of late ballots from voters, uniformed-service voters and overseas voters and report the number from each category to date on the final absentee ballot report and as part of the county canvass report. If additional late ballots are received, the county clerk shall update the number of late ballots from each category to the secretary of state."

SECTION 8. Section 1-6-14 NMSA 1978 (being Laws 1971, .218561.2
Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING MAILED BALLOTS.--

A. At any time after mailed ballots have been sent to voters and until the fifth day before the election, the county clerk may convene an absent voter election board to meet during the normal business hours of the office of the county clerk to qualify the mailed ballots that are returned. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature or the required voter identification is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" or "Rejected--Missing Required Voter Identification" in the "Notations" column of the register. The presiding judge shall place the official mailing envelope unopened in a container provided for rejected ballots.

C. A lawfully appointed challenger may view the official mailing envelope and may challenge the ballot of any mailed ballot voter for the following reasons:

(1) the official mailing envelope has been opened by someone other than the voter prior to being received
by the absent voter election board;

(2) the official mailing envelope does not contain a signature;

(3) the official mailing envelope does not contain the required voter identification; or

(4) the person offering to vote is not a voter as provided in the Election Code.

D. If a challenge is upheld by unanimous vote of the presiding judge and the election judges, the official mailing envelope shall not be opened but shall be placed in a container provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the official mailing envelope shall be opened and the vote counted.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged, the judges or election clerks shall enter the voter's name and residence address as shown on the official mailing envelope and shall make the appropriate notation opposite the voter's name in the "Notations" column of the register.

F. For any election in which fewer than ten thousand mailed ballots were sent to the voters of a county, only between 8:00 a.m. and 10:00 p.m. on the five days preceding the election, and beginning at 7:00 a.m. on election day, under the personal supervision of the presiding election

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judge, shall the election judges open the official mailing
envelope and the official inner envelope and insert the
enclosed ballot into an electronic voting machine to be
registered and retained until votes are counted and canvassed
following the closing of the polls on election night.

G. For any election in which ten thousand or more
mailed ballots were sent to the voters of a county, only during
the regular business hours of the office of the county clerk
during the two weeks preceding the election, between 8:00 a.m.
and 10:00 p.m. on the four days preceding the election and
beginning at 7:00 a.m. on election day, under the personal
supervision of the presiding election judge, shall the election
judges open the official mailing envelope and the official
inner envelope and insert the enclosed ballot into an
electronic voting machine to be registered and retained until
votes are counted and canvassed following the closing of the
polls on election night.

H. On election night, the absent voter election
board shall recess upon the earlier of completion of its work
or 11:00 p.m. An absent voter election board that recesses at
11:00 p.m. shall continue its work only between the hours of
9:30 a.m. and 8:00 p.m. on each subsequent day until the board
has completed its work.

[Hr] I. It is unlawful for a person to disclose the
results of a count and tally or the registration on a voting
machine of mailed ballots prior to the later of the closing of
the polls or the deadline for receiving mailed ballots pursuant
to Section 1-6-10 NMSA 1978.

1. J. Mailed ballots shall be counted and
tallied, where possible, on an electronic voting machine as
provided in the Election Code.

2. K. If a mailed ballot is rejected for any
reason, it shall be handled in the same manner as a
disqualified provisional paper ballot in accordance with the
Election Code."

SECTION 9. Section 1-13-4 NMSA 1978 (being Laws 1969,
Chapter 240, Section 306, as amended) is amended to read:

"1-13-4. POST-ELECTION DUTIES--COUNTY CANVASS--METHOD.--
The county clerk shall:

A. appoint an election board to conduct a
machine-tabulation or hand-tally if the county clerk has
received and logged any:

(1) paper ballots not previously tabulated;

(2) mailed ballots delivered to an election
board not previously tabulated;

(3) provisional paper ballots that have been
qualified and contain votes that are to be counted; or

(4) ballots with write-in votes not previously
counted;

B. prepare the report of the canvass of the
election returns by carefully examining the returns of each precinct to ascertain if they contain the properly executed certificates required by the Election Code and to ascertain whether any discrepancy, omission or error appears on the face of the election returns; and

[C. present the report of the canvass to the county canvassing board for the board's consideration and approval."

SECTION 10. REPEAL.--Sections 1-4-49 and 1-6-4.3 NMSA 1978 (being Laws 2005, Chapter 270, Sections 17 and 41, as amended) are repealed.