

SENATE BILL 190

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Daniel A. Ivey-Soto

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO ELECTIONS; ENACTING THE INTIMATE PARTNER VIOLENCE SURVIVOR SUFFRAGE ACT; PROVIDING A PROCEDURE FOR PARTICIPANTS IN THE CONFIDENTIAL SUBSTITUTE ADDRESS PROGRAM TO VOTE IN STATEWIDE AND SPECIAL ELECTIONS.

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] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Intimate Partner Violence Survivor

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Suffrage Act".

SECTION 2. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Intimate Partner Violence Survivor Suffrage Act:

A. "administrator" means the person appointed by the secretary of state to administer the election component of the confidential substitute address program;

B. "appropriate county clerk" means the county clerk of the county in which the residential address on a voter registration certificate is located and includes the elected official, the county clerk's chief deputy, an appointed election board and employees or agents of the county clerk with duties related to the Intimate Partner Violence Survivor Suffrage Act;

C. "certification" means the procedure provided by the Confidential Substitute Address Act for a person to be certified as a participant in the confidential substitute address program;

D. "confidential substitute address program" means the program administered by the secretary of state pursuant to the Confidential Substitute Address Act;

E. "decertification" means the procedure provided by the Confidential Substitute Address Act for a person to be decertified as a participant in the confidential substitute

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address program;

F. "delivery address" means the address where a voter-participant receives mail;

G. "election" means a statewide or special election called, conducted and canvassed pursuant to the provisions of the Election Code;

H. "participant" means a person certified to participate in the confidential substitute address program pursuant to the procedures of the Confidential Substitute Address Act; and

I. "voter-participant" means a participant who is also a voter."

SECTION 3. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] ELECTIONS COVERED--AUTOMATIC DELIVERY OF BALLOTS--FORM OF BALLOT AND BALLOT MATERIALS--CONFIDENTIALITY.--

A. The procedures in the Intimate Partner Violence Survivor Suffrage Act apply to all elections and operate notwithstanding other provisions of the Election Code or state or local laws related to elections to the contrary.

B. Upon a person's certification as a participant, the administrator shall determine whether the participant is a voter. If the participant is not a voter but appears to be a qualified elector, the administrator shall offer the

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participant the opportunity to register to vote.

C. A voter-participant shall vote exclusively by mailed absentee ballot or mailed ballot. In each election in which a voter-participant is eligible to vote, the administrator shall send a mailed absentee ballot or a mailed ballot to the voter-participant without requiring a request or application to receive a ballot.

D. The form of the ballot for a voter-participant shall be the same as the ballot provided to all other voters. A voter-participant may vote for all candidates and on all questions as if the voter were casting a ballot in person.

E. The form of the ballot materials for voter-participants shall be the same as the ballot materials provided to all other voters, except as required to implement the Intimate Partner Violence Survivor Suffrage Act.

F. With regard to communications related to participants and participant records related to voting:

(1) any communication between the secretary of state and any county clerk related to the Intimate Partner Violence Survivor Suffrage Act shall be maintained as confidential in accordance with the confidentiality provisions of Subsection A of Section 40-13B-8 NMSA 1978 and shall not be disclosed except as provided by that section; and

(2) once a person is decertified, records related to that voter are no longer confidential pursuant to

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Paragraph (1) of this subsection and may be disclosed in the same manner provided for disclosure of voter information pursuant to the provisions of the Election Code."

SECTION 4. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] VOTER RECORDS--CERTIFICATION--DECERTIFICATION--CANCELLATION.--Notwithstanding the provisions of the Voter Records System Act, the secretary of state shall:

A. maintain within the state voter registration electronic management system a secured module. Voter-participant registration records shall be maintained in the secured module and shall be accessible only as required by staff designated by the secretary of state. Voter-participant registration records shall not appear in the voter file or the county voter list, be accessible by any county user or be viewable by the public;

B. maintain a register of voter-participants, which shall serve as a supplement to the county register for the county in which each voter-participant's voter registration residential address is located. The register maintained by the secretary of state shall be filed in a fire-resistant container;

C. upon the determination that a participant is an existing voter, proceed to transfer all voter registration records related to the voter-participant from the voter file to

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the secured module and shall notify the appropriate county clerk, who shall immediately transfer the voter-participant's voter registration documents from the county register to the secretary of state. Voter registration records related to a voter-participant shall not be maintained in the county register or by the county clerk;

D. when a participant executes a new or updated certificate of registration, fulfill the duties of the appropriate county clerk in placing the voter-participant's certificate of registration in the register maintained by the secretary of state and entering the information into the secured module;

E. upon decertification of a person who is a voter:

(1) transfer the person's voter registration information from the secured module into the voter file; and

(2) deliver the certificate of voter registration to the appropriate county clerk for placement in the county register;

F. upon the cancellation of a person's voter registration when the person is also decertified as a participant:

(1) transfer the canceled voter registration information from the secured module into the voter file; and

(2) deliver the certificate of registration and other documents pertaining to the canceled voter

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registration to the appropriate county clerk for placement in the county register for the retention period; and

G. upon the cancellation of a participant's voter registration when the person remains a participant, perform the duties of the county clerk in the cancellation of registration and retention of records; provided that when the person is decertified, the secretary of state shall:

(1) transfer the canceled voter registration information from the secured module into the voter file; and

(2) if the retention period for voter registration records provided in Section 1-4-32 NMSA 1978 has not expired, deliver the certificate of registration and other documents pertaining to the canceled voter to the appropriate county clerk for placement in the county register for the remainder of the retention period."

SECTION 5. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] RANDOM IDENTIFIER AND VERIFICATION CODE.--

A. Prior to each election, the administrator shall assign to each voter-participant eligible to vote in that election a random identifier and a verification code for use in that election only.

B. In the mailed absentee ballot or mailed ballot process, the random identifier shall be used in place of the voter-participant's required voter identification and the

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verification code shall be used in place of the voter-participant's signature.

C. At the same time a ballot is mailed to a voter-participant, the administrator shall separately send the voter-participant the verification code assigned to the voter-participant for that election, along with instructions to place the verification code where a voter normally provides a signature under the privacy flap of a mailed absentee ballot or mailed ballot."

SECTION 6. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] TRANSMISSION OF BALLOTS TO VOTER-PARTICIPANTS.--

A. On the thirty-fifth day before an election, on behalf of each voter-participant eligible to vote in that election, the administrator shall request from each appropriate county clerk the ballot to be used by each voter-participant registered to vote in that county.

B. The request shall not reveal the name or address of the voter-participant. In place of a voter-participant's name and address, the administrator shall provide the appropriate county clerk the random identifier and verification code associated with the voter-participant for that election. The request made pursuant to this section is a record related to voting subject to the disclosure and retention procedures of

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Section 1-12-69 NMSA 1978.

C. No later than thirty-two days before the election, the appropriate county clerk shall transmit to the administrator the ballot for each voter-participant registered to vote in that county.

D. Twenty-eight days before the election, the administrator shall mail a ballot and balloting materials to a voter-participant's delivery address, along with a return envelope necessary to return the voted ballot to the appropriate county clerk. The return envelope shall be the same as for all other voters, except that in place of the required voter identification to be written under the privacy flap, the administrator shall provide the random identifier assigned to that voter-participant for that election. The return envelope for the voted ballot shall be postage-paid and the return address shall be the address for the appropriate county clerk.

E. When a participant registers to vote or updates a voter registration after the thirty-fifth day before an election but before the deadline to register to vote or to update an existing registration pursuant to Section 1-4-8 NMSA 1978, the administrator shall:

(1) request from the appropriate county clerk, and the appropriate county clerk shall transmit to the administrator as soon as practicable, a ballot and balloting

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materials; and

(2) send a voter-participant the ballot and balloting materials within twenty-four hours of receipt from the appropriate county clerk.

F. When an unvoted ballot is transmitted to the administrator on behalf of a voter-participant, the appropriate county clerk shall note in the ballot register the random identifier in place of the voter-participant's name and the address of the confidential substitute address program in place of the voter-participant's address and shall not note the voter-participant's gender or year of birth."

SECTION 7. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] RECEIPT OF VOTED BALLOTS FROM VOTER-PARTICIPANTS.--

A. SJC→~~Voted ballots~~←SJC SJC→**A voted ballot**←SJC shall be returned by the voter-participant to the appropriate county clerk. A voted ballot from a voter-participant shall be considered timely if it is received no later than the deadline for receiving mailed absentee ballots or mailed ballots pursuant to Section 1-6-10 NMSA 1978.

B. When a voted ballot is received from a voter-participant, the appropriate county clerk or election board shall compare the random identifier provided by the voter-participant under the privacy flap to the list of random

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identifiers provided by the administrator for that election. If the random identifier appears in both places, the appropriate county clerk shall verify that the verification code assigned to that random identifier for that election matches the verification code provided by the voter-participant under the privacy flap in lieu of the voter's signature. If the verification code is on the list provided by the administrator for use in that election and matches the random identifier assigned by the administrator to identify the voter-participant, the ballot shall be qualified and processed in the same manner as mailed absentee ballots or mailed ballots received and qualified in that election.

C. If either the random identifier or the verification code is missing, or if the random identifier and verification code under the privacy flap do not match, the ballot shall not be qualified and shall be disposed of in the same manner as mailed absentee ballots or mailed ballots received in that election and not qualified.

D. Following an election and within the time frames provided in the Election Code, the appropriate county clerk shall provide to the administrator using the random identifier for that election the voter credit information for each voter-participant who voted and the appropriate notations for any voter-participant whose election mail was returned as undeliverable."

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SECTION 8. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] STATEWIDE ELECTION--STATE CANVASS REPORT.--The secretary of state shall prepare a public report to be included with the state canvass results of each statewide election. The report shall include the total number of statewide:

- A. participants;
- B. voter-participants who were sent a ballot;
- C. voter-participants who returned a ballot; and
- D. ballots from voter-participants that were qualified and counted."

SECTION 9. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] JUDICIAL PROCEEDINGS.--

A. In a judicial proceeding related to an election, upon good cause shown and only as is required to complete the judicial proceeding, a judge may permit in-camera inspection of a voter-participant's voter registration information and information related to participation in the confidential substitute address program.

B. The administrator shall be notified and joined as an indispensable party on behalf of the confidential substitute address program in a judicial proceeding related to an election whenever a judge considers permitting in-camera

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inspection of any information related to a voter-participant and before such determination is made.

C. In a judicial proceeding related to an election in which the secretary of state is a party in the secretary's capacity as the chief election officer of the state and the administrator is joined as an indispensable party on behalf of the confidential substitute address program, the attorney general shall provide separate representation for the secretary of state and for the administrator.

D. Information reviewed in-camera pursuant to this section shall not be admitted into evidence unless the information is the basis for the final judgment by the court."

SECTION 10. Section 40-13B-4 NMSA 1978 (being Laws 2018, Chapter 40, Section 4) is amended to read:

"40-13B-4. SECRETARY OF STATE--DUTIES--SERVICE ON PARTICIPANT.--

A. The secretary of state shall:

(1) certify applicants whose applications comply with the requirements of the Confidential Substitute Address Act to participate in the confidential substitute address program; [~~and~~]

(2) upon certification with respect to each [~~certified~~] participant:

(a) issue a confidential substitute address identification card;

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(b) designate a confidential substitute address that shall be used in place of the participant's residential or delivery address by state and local government agencies;

(c) receive mail and deliveries sent to a participant's confidential substitute address and forward the mail and deliveries to the participant's delivery address at no charge to the participant;

(d) accept service of process, notice or demand that is required or permitted by law to be served on the participant and immediately forward the process, notice or demand to the participant's delivery address at no charge to the participant; and

(e) maintain records of the following that are received and forwarded by the secretary of state: 1) a participant's certified and registered mail; and 2) any process, notice or demand that is served on a participant; and

(3) administer the provisions of the Intimate Partner Violence Survivor Suffrage Act to ensure that a participant who is eligible to vote in this state is able to be securely registered to vote and to automatically receive a ballot for each election.

B. Service made pursuant to the provisions of this section is perfected three days after it is accepted by the secretary of state."

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SECTION 11. Section 40-13B-5 NMSA 1978 (being Laws 2018, Chapter 40, Section 5) is amended to read:

"40-13B-5. AGENCIES--USE OF CONFIDENTIAL SUBSTITUTE ADDRESS--PUBLIC RECORDS.--

A. A participant shall:

(1) contact each agency that requests or uses an address; and

(2) provide the agency with a copy of the participant's confidential substitute address identification card.

B. Agencies that receive copies of confidential substitute address identification cards submitted pursuant to this section shall use the participant's confidential substitute address for all purposes.

C. A school district shall use a participant's confidential substitute address as the participant's address of record and, if necessary, shall verify a student's enrollment eligibility with the secretary of state.

D. A county clerk shall transfer all records related to a participant's voter registration to the secretary of state pursuant to the provisions of the Intimate Partner Violence Survivor Suffrage Act.

~~[D-]~~ E. A participant's residential or delivery address, telephone number and email address that are maintained by an agency are not public records and shall not be disclosed

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pursuant to the Inspection of Public Records Act while a person is a participant."

SECTION 12. Section 40-13B-8 NMSA 1978 (being Laws 2018, Chapter 40, Section 8) is amended to read:

"40-13B-8. PARTICIPANT RECORDS--CONFIDENTIALITY--
DISCLOSURE PROHIBITED.--

A. The secretary of state and an agency shall not disclose the residential address, delivery address, telephone number or email address of a participant unless the information is required to be disclosed pursuant to a court order. A person or agency that receives a participant's residential address, delivery address, telephone number or email address pursuant to a court order shall not in turn disclose that information unless pursuant to a court order or unless the person has been decertified.

B. The secretary of state shall maintain the confidentiality of all records relating to an applicant for or participant in the confidential substitute address program while the person is a participant and shall:

- (1) store all tangible copies of program records in locked equipment;
- (2) store all electronic copies of program records in a password-protected system;
- (3) restrict access to all program records to secretary of state staff members who are approved to access the

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records as provided in this section; and

(4) release program records only on a court's order.

C. The secretary of state shall establish a system for restricting access to program records to approved staff members. Before being approved and granted access to program records, the staff member shall:

(1) submit to a criminal background check performed by the department of public safety;

(2) not have a record of a sex offense, felony or a misdemeanor violation related to domestic violence or sexual assault on the results of the person's criminal background check; and

(3) complete forty hours of training, including a domestic violence training course provided by the children, youth and families department and sexual assault training provided by the department of health or the crime victims reparation commission or its successor.

D. The secretary of state shall appoint a person to be the administrator of the election component of the confidential substitute address program in accordance with the Intimate Partner Violence Survivor Suffrage Act. The administrator shall meet the requirements of Subsection C of this section, and administration of the Intimate Partner Violence Survivor Suffrage Act shall conform to the

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requirements of Subsections A and B of this section and
Subsection E of Section 40-13B-5 NMSA 1978."

SECTION 13. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2019.

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