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SENATE BILL 190

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

INTRODUCED BY

Daniel A. Ivey-Soto

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  
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:

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

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

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

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

18           E. "decertification" means the procedure provided  
19 by the Confidential Substitute Address Act for a person to be  
20 decertified as a participant in the confidential substitute  
21 address program;

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

24           G. "election" means a statewide or special election  
25 called, conducted and canvassed pursuant to the provisions of

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1 the Election Code;

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

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

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

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

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

17 B. Upon a person's certification as a participant,  
18 the administrator shall determine whether the participant is a  
19 voter. If the participant is not a voter but appears to be a  
20 qualified elector, the administrator shall offer the  
21 participant the opportunity to register to vote.

22 C. A voter-participant shall vote exclusively by  
23 mailed absentee ballot or mailed ballot. In each election in  
24 which a voter-participant is eligible to vote, the  
25 administrator shall send a mailed absentee ballot or a mailed

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1 ballot to the voter-participant without requiring a request or  
2 application to receive a ballot.

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

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

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

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

19 (2) once a person is decertified, records  
20 related to that voter are no longer confidential pursuant to  
21 Paragraph (1) of this subsection and may be disclosed in the  
22 same manner provided for disclosure of voter information  
23 pursuant to the provisions of the Election Code."

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

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1           "[NEW MATERIAL] VOTER RECORDS--CERTIFICATION--

2           DECERTIFICATION--CANCELLATION.--Notwithstanding the provisions  
3           of the Voter Records System Act, the secretary of state shall:

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

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

18                   C. upon the determination that a participant is an  
19          existing voter, proceed to transfer all voter registration  
20          records related to the voter-participant from the voter file to  
21          the secured module and shall notify the appropriate county  
22          clerk, who shall immediately transfer the voter-participant's  
23          voter registration documents from the county register to the  
24          secretary of state. Voter registration records related to a  
25          voter-participant shall not be maintained in the county

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1 register or by the county clerk;

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

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

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

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

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

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

19 (2) deliver the certificate of registration  
20 and other documents pertaining to the canceled voter  
21 registration to the appropriate county clerk for placement in  
22 the county register for the retention period; and

23 G. upon the cancellation of a participant's voter  
24 registration when the person remains a participant, perform the  
25 duties of the county clerk in the cancellation of registration

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1 and retention of records; provided that when the person is  
2 decertified, the secretary of state shall:

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

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

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

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

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

18 B. In the mailed absentee ballot or mailed ballot  
19 process, the random identifier shall be used in place of the  
20 voter-participant's required voter identification and the  
21 verification code shall be used in place of the voter-  
22 participant's signature.

23 C. At the same time a ballot is mailed to a  
24 voter-participant, the administrator shall separately send the  
25 voter-participant the verification code assigned to the

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1 voter-participant for that election, along with instructions to  
2 place the verification code where a voter normally provides a  
3 signature under the privacy flap of a mailed absentee ballot or  
4 mailed ballot."

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

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

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

14 B. The request shall not reveal the name or address  
15 of the voter-participant. In place of a voter-participant's  
16 name and address, the administrator shall provide the  
17 appropriate county clerk the random identifier and verification  
18 code associated with the voter-participant for that election.  
19 The request made pursuant to this section is a record related  
20 to voting subject to the disclosure and retention procedures of  
21 Section 1-12-69 NMSA 1978.

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

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

13           E. When a participant registers to vote or updates  
14 a voter registration after the thirty-fifth day before an  
15 election but before the deadline to register to vote or to  
16 update an existing registration pursuant to Section 1-4-8 NMSA  
17 1978, the administrator shall:

18                   (1) request from the appropriate county clerk,  
19 and the appropriate county clerk shall transmit to the  
20 administrator as soon as practicable, a ballot and balloting  
21 materials; and

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

25           F. When an unvoted ballot is transmitted to the

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1 administrator on behalf of a voter-participant, the appropriate  
2 county clerk shall note in the ballot register the random  
3 identifier in place of the voter-participant's name and the  
4 address of the confidential substitute address program in place  
5 of the voter-participant's address and shall not note the  
6 voter-participant's gender or year of birth."

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

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

11 A. Voted ballots shall be returned by the voter-  
12 participant to the appropriate county clerk. A voted ballot  
13 from a voter-participant shall be considered timely if it is  
14 received no later than the deadline for receiving mailed  
15 absentee ballots or mailed ballots pursuant to Section 1-6-10  
16 NMSA 1978.

17 B. When a voted ballot is received from a voter-  
18 participant, the appropriate county clerk or election board  
19 shall compare the random identifier provided by the voter-  
20 participant under the privacy flap to the list of random  
21 identifiers provided by the administrator for that election.  
22 If the random identifier appears in both places, the  
23 appropriate county clerk shall verify that the verification  
24 code assigned to that random identifier for that election  
25 matches the verification code provided by the voter-participant

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1 under the privacy flap in lieu of the voter's signature. If  
2 the verification code is on the list provided by the  
3 administrator for use in that election and matches the random  
4 identifier assigned by the administrator to identify the voter-  
5 participant, the ballot shall be qualified and processed in the  
6 same manner as mailed absentee ballots or mailed ballots  
7 received and qualified in that election.

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

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

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

23 "[NEW MATERIAL] STATEWIDE ELECTION--STATE CANVASS  
24 REPORT.--The secretary of state shall prepare a public report  
25 to be included with the state canvass results of each statewide

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1 election. The report shall include the total number of  
2 statewide:

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

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

10 "[NEW MATERIAL] JUDICIAL PROCEEDINGS.--

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

17 B. The administrator shall be notified and joined  
18 as an indispensable party on behalf of the confidential  
19 substitute address program in a judicial proceeding related to  
20 an election whenever a judge considers permitting in-camera  
21 inspection of any information related to a voter-participant  
22 and before such determination is made.

23 C. In a judicial proceeding related to an election  
24 in which the secretary of state is a party in the secretary's  
25 capacity as the chief election officer of the state and the

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1 administrator is joined as an indispensable party on behalf of  
2 the confidential substitute address program, the attorney  
3 general shall provide separate representation for the secretary  
4 of state and for the administrator.

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

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

10 "40-13B-4. SECRETARY OF STATE--DUTIES--SERVICE ON  
11 PARTICIPANT.--

12 A. The secretary of state shall:

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

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

19 (a) issue a confidential substitute  
20 address identification card;

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

25 (c) receive mail and deliveries sent to

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1 a participant's confidential substitute address and forward the  
2 mail and deliveries to the participant's delivery address at no  
3 charge to the participant;

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

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

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

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

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

23 "40-13B-5. AGENCIES--USE OF CONFIDENTIAL SUBSTITUTE  
24 ADDRESS--PUBLIC RECORDS.--

25 A. A participant shall:

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

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

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

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

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

18 [~~D.~~] E. A participant's residential or delivery  
19 address, telephone number and email address that are maintained  
20 by an agency are not public records and shall not be disclosed  
21 pursuant to the Inspection of Public Records Act while a person  
22 is a participant."

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

25 "40-13B-8. PARTICIPANT RECORDS--CONFIDENTIALITY--

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1 DISCLOSURE PROHIBITED.--

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

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

15 (1) store all tangible copies of program  
16 records in locked equipment;

17 (2) store all electronic copies of program  
18 records in a password-protected system;

19 (3) restrict access to all program records to  
20 secretary of state staff members who are approved to access the  
21 records as provided in this section; and

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

24 C. The secretary of state shall establish a system  
25 for restricting access to program records to approved staff

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1 members. Before being approved and granted access to program  
2 records, the staff member shall:

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

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

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

14 D. The secretary of state shall appoint a person to  
15 be the administrator of the election component of the  
16 confidential substitute address program in accordance with the  
17 Intimate Partner Violence Survivor Suffrage Act. The  
18 administrator shall meet the requirements of Subsection C of  
19 this section, and administration of the Intimate Partner  
20 Violence Survivor Suffrage Act shall conform to the  
21 requirements of Subsections A and B of this section and  
22 Subsection E of Section 40-13B-5 NMSA 1978."

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