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HOUSE BILL 79

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

INTRODUCED BY

Miguel P. Garcia and Daymon Ely and Mark Moores and Katy Duhigg

AN ACT

RELATING TO PRIMARY ELECTIONS; ALLOWING VOTERS WHO HAVE NOT DESIGNATED A MAJOR POLITICAL PARTY AFFILIATION ON THEIR CERTIFICATES OF REGISTRATION TO PARTICIPATE IN THE PRIMARY ELECTION PROCESS BY CHOOSING TO AFFILIATE WITH A MAJOR PARTY PARTICIPATING IN A PRIMARY BY REQUESTING THE PARTY'S BALLOT; MAKING CONFORMING CHANGES.

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

SECTION 1. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the change of party affiliation.

B. A voter who has previously declined to designate

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1 a party affiliation on the voter's certificate of registration
2 but who desires to designate a party affiliation on the voter's
3 certificate of registration shall execute a new certificate of
4 registration indicating the desired party affiliation.

5 C. A voter who does not designate on the
6 certificate of registration a party affiliation shall be
7 considered to have declined to designate a party affiliation.

8 D. A voter who has declined to designate on the
9 voter's certificate of registration a party affiliation, or who
10 designated affiliation with a party other than a major
11 political party on the voter's certificate of registration, but
12 who chooses to affiliate with a major political party that is
13 participating in a primary election may do so by requesting the
14 ballot of one of the parties participating in that primary
15 election. The voter's certificate of registration shall not be
16 changed to reflect a new or different party affiliation unless
17 the voter so requests in accordance with the provisions of
18 Subsection B of this section."

19 SECTION 2. Section 1-6-4 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 130, as amended) is amended to read:

21 "1-6-4. MAILED BALLOT APPLICATION.--

22 A. In a statewide election, application by a voter
23 for a mailed ballot shall be made only on a paper form or its
24 online equivalent. The form shall identify the applicant and
25 contain information to establish the applicant's qualification

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1 for issuance of a mailed ballot under the Absent Voter Act;
2 provided that only on the application form for a primary
3 election ballot there shall be a box, space or place provided
4 for designation of the voter's political party affiliation; and
5 further provided that a voter who has declined to designate a
6 party affiliation on the voter's certificate of registration or
7 who designated affiliation with a party other than a major
8 party on the voter's certificate of registration, but who
9 chooses to affiliate with a major political party participating
10 in a primary election shall be provided the option on the
11 application form for a mailed ballot in a primary election to
12 request the ballot of one of the parties participating in the
13 primary election.

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

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1 means.

2 C. The secretary of state shall allow a voter to
3 submit an online application for a mailed ballot through a
4 website authorized by the secretary of state; provided that the
5 voter shall have a current or expired New Mexico driver's
6 license or state identification card issued by the motor
7 vehicle division of the taxation and revenue department. An
8 online request for a mailed ballot shall contain all of the
9 information that is required for a paper form. The voter shall
10 also provide the person's full New Mexico driver's license
11 number or state identification card number.

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

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

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

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

24 E. Online applications for mailed ballots shall
25 retain the dates of submission by the qualified elector and of

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1 acceptance by the county clerk. For purposes of deadlines
2 contained in the Election Code, the time and date of the
3 submission by the voter shall be considered the time and date
4 when the application for a mailed ballot is received by the
5 county clerk.

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

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

22 SECTION 3. Section 1-6-22.1 NMSA 1978 (being Laws 2009,
23 Chapter 251, Section 1 and Laws 2009, Chapter 274, Section 1,
24 as amended) is amended to read:

25 "1-6-22.1. MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING
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1 IN LIEU OF POLLING PLACE.--

2 A. Notwithstanding the provisions of Sections
3 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in
4 November of each odd-numbered year, a board of county
5 commissioners may designate a precinct as a mail ballot
6 election precinct if, upon a written request of the county
7 clerk, it finds that the precinct has fewer than one hundred
8 voters and the nearest polling place for an adjoining precinct
9 is more than twenty miles driving distance from the boundary
10 for the precinct in question.

11 B. If a precinct is designated a mail ballot
12 election precinct, in addition to the notice required pursuant
13 to Section 1-3-8 NMSA 1978, the county clerk shall notify by
14 mail with delivery confirmation all voters in that precinct at
15 least forty-two days before an election that each voter will be
16 sent an absentee ballot twenty-eight days before the election
17 and that there will be no polling place for the precinct on
18 election day. The county clerk shall include in the notice a
19 card informing the voter that if the voter does not want to
20 receive an absentee ballot for that election, the voter should
21 return the card before the date the county clerk is scheduled
22 to mail out absentee ballots. The notice shall also inform the
23 voter that a voting system equipped for persons with
24 disabilities will be available at all early voting sites before
25 election day and in the office of the county clerk on election

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1 day in case the voter prefers to vote in person and not by
2 mail. In addition, the notice shall inform the voter if the
3 county is consolidating precincts on election day and, if so,
4 the ability of the voter to cast a ballot at any consolidated
5 precinct on election day if the voter chooses not to receive an
6 absentee ballot, or to cast a provisional ballot at any
7 consolidated precinct if the voter does not receive an absentee
8 ballot, which will be counted upon confirmation that the voter
9 has not returned the absentee ballot.

10 C. For a primary election, the card sent to voters
11 who have not designated a party affiliation on their
12 certificates of registration, or who designated affiliation
13 with a party other than a major party on the voter's
14 certificate of registration, shall require that such voters
15 return the card and indicate which major political party's
16 ballot they choose for that primary election.

17 ~~[G.]~~ D. The county clerk shall mail each voter in
18 the mail ballot election precinct an absentee ballot on the
19 twenty-eighth day before an election, unless the voter has
20 requested otherwise or does not return the card required by
21 Subsection C of this section indicating which party ballot the
22 voter chooses for that election, along with a notice that there
23 will be no polling place in that precinct on election day.

24 ~~[D.]~~ E. The county clerk shall keep a sufficient
25 number of ballots from a mail ballot election precinct such

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1 that a voter from that precinct may vote on a replacement or
2 provisional paper ballot pursuant to Section 1-6-16 NMSA 1978
3 or on an emergency paper ballot pursuant to Section 1-6-16.2
4 NMSA 1978."

5 SECTION 4. Section 1-12-7 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 246, as amended) is amended to read:

7 "1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
8 VOTE--PERSONS PERMITTED TO VOTE UPON CHOOSING TO AFFILIATE WITH
9 A PARTY.--

10 A. A person shall not vote in a primary, general or
11 statewide special election unless [he] the person is a voter of
12 the county in which [he] the person offers to vote. A valid
13 original certificate of registration in the county register is
14 prima facie evidence of being a voter in the precinct.

15 ~~[B. A person whose major party affiliation is not~~
16 ~~designated on his original certificate of registration shall~~
17 ~~not vote in a primary election.~~

18 ~~G.]~~ B. A person at a primary election shall not be
19 permitted to vote for the candidate of any party other than the
20 party designated on [his] the person's current certificate of
21 registration; provided that a person who has declined to
22 designate a political party affiliation on the person's
23 certificate of registration, or who designated affiliation with
24 a party other than a major party on the voter's certificate of
25 registration, shall be permitted to choose to affiliate with a

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1 major political party in a primary election by requesting a
2 major political party's primary election ballot and shall be
3 permitted to vote for the candidates on that party's ballot."

4 SECTION 5. Section 1-12-7.1 NMSA 1978 (being Laws 1969,
5 Chapter 240, Section 112, as amended) is amended to read:

6 "1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF
7 VOTERS--USE DURING ELECTION.--

8 A. At each election day polling location, other
9 than a consolidated precinct where any voter in the county may
10 vote, the precinct board shall post securely at or near the
11 entrance of the polling place one copy of an alphabetical list
12 of voters and a map of the precincts represented in that
13 polling place for use of the voters prior to voting. The
14 posted copy shall not contain a listing of voter addresses,
15 years, months or days of birth or social security numbers.

16 B. At each polling location where physical rosters
17 are used, the presiding judge of the precinct board shall
18 assign one judge or election clerk of the board to be in charge
19 of one copy of the checklist of voters, which shall be used to
20 confirm the registration and voting of each person offering to
21 vote.

22 C. The presiding judge of the precinct board shall
23 assign one judge or election clerk to be in charge of the
24 signature roster.

25 D. The judge or election clerk assigned to confirm

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1 registration shall determine that each person offering to vote
2 is registered and, in the case of a primary election, that the
3 voter is either currently registered in a party designated on
4 the primary election ballot or has declined to designate a
5 party affiliation on the voter's certificate of registration,
6 or who designated affiliation with a party other than a major
7 party on the voter's certificate of registration, and chooses
8 to affiliate with a major political party for that primary
9 election by requesting a ballot of a party designated on the
10 primary election ballot. If the person's registration is
11 confirmed and the voter provides the required voter
12 identification, the judge or election clerk shall announce to
13 the judges or election clerks the list number and the name of
14 the voter as shown on the checklist of voters. If the voter
15 does not provide the required voter identification, the voter
16 shall be allowed to vote on a provisional paper ballot and
17 shall provide the required voter identification to the county
18 clerk's office before 5:00 p.m. on the second day following the
19 election, or to the precinct board before the polls close, or
20 the voter's provisional ballot shall not be qualified. If the
21 required voter identification is provided, the voter's
22 provisional paper ballot shall be qualified and the voter shall
23 not vote on any other type of ballot.

24 E. The judge or election clerk shall locate the
25 name on the signature roster and shall require the voter to

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1 sign the voter's usual signature or, if unable to write, to
2 make the voter's mark opposite the voter's printed name. If
3 the voter makes the voter's mark, it shall be witnessed by one
4 of the judges or election clerks of the precinct board.

5 F. If the signature roster indicates that the voter
6 is required to present a physical form of identification before
7 voting, the judge or election clerk shall ask the voter for the
8 required physical form of identification. If the voter does
9 not provide the required identification, the voter shall be
10 allowed to vote on a provisional paper ballot; provided,
11 however, that if the voter brings the required physical form of
12 identification to the polling place after casting a provisional
13 paper ballot, that ballot shall be qualified.

14 G. The judge or election clerk shall follow the
15 procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA
16 1978 if a person whose name does not appear on the signature
17 roster requests to vote or a person is required to vote on a
18 provisional paper ballot.

19 H. A voter shall not be permitted to vote until the
20 voter has properly signed the voter's usual signature or made
21 the voter's mark in the signature roster."

22 SECTION 6. Section 1-12-7.2 NMSA 1978 (being Laws 1969,
23 Chapter 240, Section 114, as amended) is amended to read:

24 "1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

25 A. A voter whose name does not appear on the voter

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1 list and signature roster for the precinct in which the voter
2 offers to vote shall be permitted to vote in the precinct
3 pursuant to the federal National Voter Registration Act of 1993
4 and Section 1-12-8 NMSA 1978.

5 B. The judges or election clerks in charge of the
6 signature rosters shall add the voter's name and address in ink
7 to the signature roster on the line immediately following the
8 last entered voter's name, and the voter shall be allowed to
9 sign an affidavit of eligibility and cast a provisional paper
10 ballot; provided that the voter has first signed or marked both
11 the signature roster and checklist of registered voters.

12 C. The provisional paper ballot tracking number for
13 the voter shall be entered on the affidavit of eligibility, the
14 signature roster and the checklist of registered voters.

15 D. In a primary election, a voter shall not be
16 permitted to vote for a candidate of a party different from the
17 party designation shown on the voter's certificate of
18 registration unless the voter's certificate of registration
19 shows that the voter has declined to designate a party
20 affiliation or that the voter designated affiliation with a
21 party other than a major party on the voter's certificate of
22 registration, and the voter chooses to affiliate with a major
23 political party for that primary election by requesting the
24 ballot of a party participating in the primary. Upon making
25 that determination, the county clerk shall transmit the ballot

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1 to the county canvassing board to be tallied and included in
2 the canvass of that county for the appropriate precinct."

3 SECTION 7. Section 1-12-20 NMSA 1978 (being Laws 1969,
4 Chapter 240, Section 273, as amended) is amended to read:

5 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A
6 challenge may be interposed by a member of the precinct board
7 or by a party challenger for the following reasons:

8 A. the person offering to vote is not registered to
9 vote;

10 B. the person offering to vote is listed among
11 those persons to whom an absentee ballot was mailed;

12 C. the person offering to vote has already cast a
13 ballot in that election;

14 D. the person offering to vote is improperly
15 registered because the person is not a qualified elector; or

16 E. in the case of a primary election, the person
17 desiring to vote is ~~[not]~~ currently affiliated with a political
18 party represented on the ballot but the person requests a
19 ballot for a party with which the person is not affiliated."

20 SECTION 8. Section 1-15A-2 NMSA 1978 (being Laws 1977,
21 Chapter 230, Section 2, as amended) is amended to read:

22 "1-15A-2. VOTING IN PRESIDENTIAL PRIMARY--DATE OF
23 ELECTION.--

24 A. In the year in which the president and vice
25 president of the United States are to be elected, the

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1 registered voters of this state shall be given an opportunity
2 to express their preference for the person to be the
3 presidential candidate of their political party in either a
4 presidential primary election or in accordance with the
5 selection procedure for presidential candidates of each voter's
6 party. The presidential primary election shall be held on the
7 same date as the primary election is held in this state.

8 B. A voter may vote in a presidential primary
9 election on the ballot of only one of the parties participating
10 in the primary election in accordance with the provisions of
11 Section 1-12-7 NMSA 1978."

12 SECTION 9. Section 1-15A-8 NMSA 1978 (being Laws 1977,
13 Chapter 230, Section 7, as amended) is amended to read:

14 "1-15A-8. VOTING IN PRESIDENTIAL PRIMARY--BALLOT
15 POSITION.--

16 A. All candidates in the presidential primary
17 election shall appear with the candidates for other offices of
18 their respective parties at an appropriate place on the ballot.
19 Candidates who are nominated by committee and by petition shall
20 be placed first as a group on the presidential primary ballot
21 with each candidate's respective position in that group
22 determined by the provisions of [~~the Ballot Positioning Act~~]
23 Section 1-10-8.1 NMSA 1978. The ballot position for the
24 uncommitted category shall be placed last on the presidential
25 primary ballot.

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B. The voter shall be able to cast ~~[his]~~ a ballot for one of the presidential candidates of ~~[his]~~ the party with which the voter is affiliated or, if the voter has declined to designate a party affiliation on the voter's certificate of registration or the voter designated affiliation with a party other than a major party on the voter's certificate of registration, the party with which the voter chooses to affiliate in that election in accordance with the provisions of Section 1-12-7 NMSA 1978 or for an uncommitted delegation. A vote of the latter kind shall express the preference for an uncommitted delegation from New Mexico to the national convention of ~~[that voter's]~~ the party with which the voter is affiliated in the primary election."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.