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HOUSE BILL 686

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO ELECTIONS; PROVIDING ADDITIONAL PROCEDURES FOR
PROCESSING PROVISIONAL BALLOTS.

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

Section 1. Section 1-6-16 NMSA 1978 (being Laws 1969,
Chapter 240, Section 141, as amended) is amended to read:

"1-6-16. VOTING IN PERSON PROHIBITED.--

A. Except as provided in Section 1-6-16.1 NMSA
1978, no person who has been issued an absentee ballot shall
vote in person at his precinct poll.

B. At any time prior to 5:00 p.m. on the Monday
immediately preceding the date of the election, a person whose
absentee ballot application has been accepted and who was
mailed an absentee ballot but who has not received the absentee
ballot may execute, in the office of the county clerk of the

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1 county where he is registered to vote, a sworn affidavit, which
2 shall be printed on the outer envelope of a provisional ballot,
3 stating that he did not receive or vote his absentee ballot.
4 Upon receipt of the sworn affidavit, the county clerk shall
5 issue the voter a [~~replacement absentee~~] provisional paper
6 ballot.

7 C. The secretary of state shall prescribe the form
8 of the affidavit and the manner in which the county clerk shall
9 void the first ballot mailed to the applicant."

10 Section 2. Section 1-6-16.1 NMSA 1978 (being Laws 1989,
11 Chapter 368, Section 1, as amended) is amended to read:

12 "1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT
13 TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

14 A. A voter who applies for an absentee ballot but
15 has not received the absentee ballot by mail as of the date of
16 the election may present himself at his assigned polling place
17 and, after executing an affidavit of nonreceipt of absentee
18 ballot, which shall be printed on the outer envelope of the
19 provisional ballot, shall be permitted to vote on [~~an~~
20 emergency] a provisional paper ballot.

21 B. The completed ballot shall be placed in an
22 official inner envelope substantially as prescribed by Section
23 1-6-8 NMSA 1978 and sealed. The official inner envelope shall
24 then be placed in an official envelope substantially as
25 prescribed for a transmittal envelope or mailing envelope in

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1 Section 1-6-8 NMSA 1978. This envelope shall contain a form on
2 its back that identifies the voter by name and signature roster
3 number and a printed statement to the effect that the voter
4 made application for an absentee ballot but had not received it
5 as of the date of the election and is permitted to vote by
6 [~~emergency~~] provisional paper ballot.

7 C. The presiding election judge shall put [~~all~~
8 ~~absentee~~] the ballots in a special envelope provided for that
9 purpose by the county clerk, seal it and return it to the
10 county clerk along with the machine tally sheets. The sealed
11 envelope shall not be put in the locked ballot box.

12 D. Upon receipt of the envelope containing
13 [~~absentee~~] the ballots, the county clerk, no later than forty-
14 eight hours after the close of the election, shall remove the
15 transmittal envelopes and, without removing or opening the
16 inner envelopes, determine [~~that~~]:

17 (1) if a voter did in fact make application
18 for an absentee ballot; and

19 (2) if an absentee ballot was received by the
20 county clerk from the voter by 7:00 p.m. on election day.

21 E. Upon making that determination, the county clerk
22 shall [~~remove the inner envelope without opening it, retain the~~
23 ~~transmittal envelope with the other election returns and place~~
24 ~~the inner unopened envelope in a secure container to be~~
25 ~~transmitted to the county canvassing board~~] indicate on the

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1 transmittal envelope the recommendation to count the ballot or
2 not, and why, and then send the unopened transmittal envelopes
3 to the absent voter precinct board to be tallied [~~and included~~
4 ~~in the canvass of that county]~~ for the appropriate precinct.

5 F. The secretary of state shall prescribe and
6 furnish the necessary envelopes for purposes of this section
7 and shall adopt rules [~~and regulations]~~ deemed necessary to
8 preserve the secrecy of the [~~emergency]~~ provisional paper
9 ballots."

10 Section 3. Section 1-12-25.3 NMSA 1978 (being Laws 2003,
11 Chapter 356, Section 6) is amended to read:

12 "1-12-25.3. PROVISIONAL PAPER BALLOTS--REQUIRED
13 INFORMATION.--

14 A. At a minimum, the following information shall be
15 printed on the outer envelope for a provisional paper ballot:

- 16 (1) the name and signature of the voter;
17 (2) the voter's registered address, both
18 present and former if applicable;
19 (3) the voter's date of birth;
20 (4) the reason for using the ballot;
21 (5) the precinct and the polling place at
22 which the voter has voted;
23 (6) the voter's social security number; [~~and]~~
24 (7) sufficient space to list the disposition
25 of the ballot after review by the county clerk;

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1 (8) the line number the voter signed on the
2 signature roster; and

3 (9) notice that intentionally making a false
4 statement is punishable as a fourth degree felony.

5 B. A provisional paper ballot shall not be rejected
6 for lack of the information required by this section as long as
7 the voter provides a valid signature and sufficient information
8 to determine eligibility."

9 Section 4. Section 1-12-25.4 NMSA 1978 (being Laws 2003,
10 Chapter 356, Section 7) is amended to read:

11 "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

12 A. Upon closing of the polls, provisional paper
13 ballots shall be delivered to the county clerk, who shall
14 determine if the ballots will be counted prior to certification
15 of the election.

16 B. A provisional paper ballot shall not be counted
17 if the registered voter did not sign either the signature
18 roster or the ballot's envelope.

19 C. If there is no record of the voter ever having
20 been registered in the county, the voter shall be offered the
21 opportunity to register and the provisional paper ballot shall
22 not be counted.

23 D. If the voter was registered in the county, the
24 registration was later canceled and the county clerk determines
25 that the cancellation was in error, the voter's registration

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1 shall be immediately restored and the provisional paper ballot
2 counted.

3 E. If the county clerk determines that the
4 cancellation was not in error, the voter shall be offered the
5 opportunity to register at the voter's correct address, and the
6 provisional paper ballot shall not be counted.

7 F. If the voter is a registered voter in the
8 county, but has voted on a provisional paper ballot at a
9 polling place other than the voter's designated polling place,
10 the absent voter precinct board and county canvassing board
11 shall ensure that only those votes for the positions or
12 measures for which the voter was eligible to vote are counted.

13 G. If the county clerk finds that the voter who
14 voted on a provisional paper ballot at the polls has also voted
15 an absentee ballot in that election, the provisional paper
16 ballot shall not be counted.

17 H. Upon completing the assessment of provisional
18 ballots, the county clerk shall convene the absent voter
19 precinct boards to review the county clerk's determinations,
20 count and tally votes from the valid ballots and report the
21 results to the county clerk; provided, however, that at least
22 twenty-four hours have elapsed since the absent voter precinct
23 board last met to count and tally votes. By a majority vote of
24 the precinct board members, and in accordance with the
25 provisions of Subsections B through G of this section, a

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1 determination of the county clerk on how a provisional ballot
2 will be treated may be changed.

3 ~~[H.]~~ I. The county canvassing board shall prepare a
4 tally displaying the number of provisional paper ballots
5 received, the number found valid and counted, the number
6 rejected and not counted and the reason for not counting the
7 ballots as part of the canvassing process and forward it to the
8 secretary of state immediately upon certification of the
9 election.

10 ~~[F.]~~ J. The secretary of state shall issue rules to
11 ensure securing the secrecy of the provisional paper ballots
12 and protecting against fraud in the voting process."

13 Section 5. Section 1-12-28 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 283, as amended) is amended to read:

15 "1-12-28. CONDUCT OF ELECTION--ELECTION CERTIFICATE.--

16 A. Immediately upon the closing of the polls, the
17 precinct board shall complete and sign a certificate which
18 shall state: "We certify the _____ election
19 complete with the voting of voting machine number _____ by
20 voter number _____ on the signature roster."

21 B. The precinct board shall also certify the
22 following:

23 (1) number of paper ballots destroyed and
24 their ballot numbers;

25 (2) number and ballot numbers of spoiled

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1 ballots;
2 (3) total emergency ballots voted;
3 (4) total provisional ballots voted and
4 subtotals for provisional ballots voted on due to registration
5 questions and for absentee ballot replacements;
6 (5) total votes cast;
7 (6) number of voters who signed the signature
8 roster; and
9 (7) an explanation if the totals for
10 Paragraphs (5) and (6) of this subsection are not equal to each
11 other."

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