

HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 52 & 395

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR VOTER REGISTRATION AT
EARLY VOTING SITES FOR PRIMARY AND GENERAL ELECTIONS.

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

Section 1. A new section of Chapter 1, Article 6 NMSA
1978 is enacted to read:

"~~[NEW MATERIAL]~~ EARLY VOTING--REGISTRATION PROCEDURES.--

A. If a qualified elector is not registered to vote
or needs to update the qualified elector's existing certificate
of registration and is at an early voting site for a primary or
general election in the county in which the qualified elector
resides, the qualified elector shall be allowed to complete a
certificate of registration and cast a ballot from the precinct
in which the qualified elector resides; provided that the
qualified elector:

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underscored material = new
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1 (1) presents a physical form of identification
2 as defined in Section 1-1-24 NMSA 1978 to the county clerk or
3 the clerk's authorized representative;

4 (2) completes a certificate of registration
5 form;

6 (3) subscribes an application to vote; and

7 (4) is entered into the statewide electronic
8 voter file.

9 B. If the early voting site does not have real-time
10 access to the statewide electronic voter file, and the
11 qualified elector fulfills the conditions specified in
12 Paragraphs (1) through (3) of Subsection A of this section, the
13 voter shall be issued a provisional ballot.

14 C. A voter shall not be allowed to change party
15 affiliation when registering at an early voting site during a
16 primary election.

17 D. For registration purposes, "early voting site"
18 means an alternate voting site or the office of the county
19 clerk during the time when in-person absentee voting is being
20 conducted."

21 Section 2. Section 1-1-24 NMSA 1978 (being Laws 2005,
22 Chapter 270, Section 6, as amended) is amended to read:

23 "1-1-24. REQUIRED VOTER IDENTIFICATION.--As used in the
24 Election Code, "required voter identification" means any of the
25 following forms of identification as chosen by the [voter]

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1 qualified elector:

2 A. a physical form of identification, which may be:

3 (1) an original or copy of a current and valid
4 government-issued photo identification with or without an
5 address, which address is not required to match the [~~voter's~~
6 ~~certificate of~~] qualified elector's registration address; or

7 (2) an original or copy of a current utility
8 bill, bank statement, government check, paycheck, student
9 identification card or other government document, including
10 identification issued by an Indian nation, tribe or pueblo,
11 that shows the name and address of the person, the address of
12 which is [~~not~~] required to match the [~~voter's certificate of~~]
13 qualified elector's registration address; or

14 B. a verbal or written statement by the voter of
15 the voter's name, registration address and year of birth;
16 provided, however, that the statement of the voter's name need
17 not contain the voter's middle initial or suffix."

18 Section 3. Section 1-4-5.1 NMSA 1978 (being Laws 1993,
19 Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
20 as amended) is amended to read:

21 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

22 A. A qualified elector may apply for registration:

23 (1) by mail;
24 (2) in the office of the secretary of state or
25 county clerk; or

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1 (3) with a registration agent or officer.

2 B. A person may request certificate of registration
3 forms from:

4 (1) the secretary of state or any county clerk
5 in person, by telephone or by mail for that person or for other
6 persons; or

7 (2) a county clerk or the clerk's authorized
8 representative at an early voting site.

9 C. Except as provided in Subsection D of this
10 section, a qualified elector who wishes to register to vote
11 shall fill out completely and sign the certificate of
12 registration. The qualified elector may seek the assistance of
13 any person in completing the certificate of registration.

14 D. A qualified elector who has filed for an order
15 of protection pursuant to the provisions of the Family Violence
16 Protection Act and who presents a copy of that order from a
17 state or tribal court to the registration officer shall not be
18 required to provide physical residence address information on
19 the certificate of registration.

20 E. Completed certificates of registration may be:

21 (1) mailed or presented in person by the
22 registrant or any other person to the secretary of state; [~~or~~]

23 (2) mailed or presented in person by the
24 registrant or any other person to the county clerk of the
25 county in which the registrant resides; or

1 (3) completed at an early voting site and
2 presented to the county clerk or the clerk's authorized
3 representative at the early voting site in the county in which
4 the qualified elector resides.

5 F. If the registrant wishes to vote in [~~the next~~]
6 an election, the completed and signed certificate of
7 registration shall be delivered or mailed and postmarked at
8 least twenty-eight days before the election, or completed at an
9 early voting site and presented to the county clerk or the
10 clerk's authorized representative at an early voting site in
11 the county in which the qualified elector resides.

12 G. Upon receipt of a certificate of registration,
13 the secretary of state shall send the certificate to the county
14 clerk in the county where the qualified elector resides.

15 H. Only when the certificate of registration is
16 properly filled out, signed by the qualified elector and
17 accepted for filing by the county clerk as evidenced by the
18 county clerk's signature or stamp and the date of acceptance
19 thereon and when notice has been received by the registrant
20 shall it constitute an official public record of the
21 registration of the qualified elector.

22 I. The secretary of state shall prescribe the form
23 of the certificate of registration, which form shall be a
24 postpaid mail-in format and shall be printed in Spanish and
25 English. The certificate of registration form shall be clear

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1 and understandable to the average person and shall include
2 brief but sufficient instructions to enable the qualified
3 elector to complete the form without assistance. The form
4 shall also include:

5 (1) the question "Are you a citizen of the
6 United States of America?" and boxes for the applicant to check
7 to indicate whether the applicant is or is not a citizen;

8 (2) the question "Will you be at least
9 eighteen years of age on or before election day?" and boxes for
10 the applicant to check to indicate whether the applicant will
11 be eighteen years of age or older on election day;

12 (3) the statement "If you checked 'no' in
13 response to either of these questions, do not complete this
14 form.";

15 (4) a statement informing the applicant that:

16 (a) if the form is submitted by mail by
17 the applicant and the applicant is registering for the first
18 time in New Mexico, the applicant must submit with the form a
19 copy of: 1) a current and valid government-issued photo
20 identification; or 2) a current utility bill, bank statement,
21 government check, paycheck, student identification card or
22 other government document, including identification issued by
23 an Indian nation, tribe or pueblo, that shows the name and
24 current address of the applicant; and

25 (b) if the applicant does not submit the

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1 required identification, the applicant will be required to do
2 so when voting in person or absentee; and

3 (5) a statement requiring the applicant to
4 swear or affirm that the information supplied by the applicant
5 is true."

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

8 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF
9 REGISTRATION--CLOSE OF REGISTRATION--EARLY VOTING SITE
10 REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--
11 LATE REGISTRATION.--

12 A. For qualified electors other than federal
13 qualified electors or overseas voters, the following provisions
14 shall apply:

15 (1) the county clerk shall receive
16 certificates of registration at all times during normal working
17 hours, except that the clerk shall close registration at
18 5:00 p.m. on the twenty-eighth day immediately preceding any
19 election at which the registration books are to be furnished to
20 the precinct board;

21 (2) during the period when early voting sites
22 are open, the county clerk shall accept for filing certificates
23 of registration from qualified electors who register to vote at
24 an early voting site in the county in which the qualified
25 elector resides;

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1 ~~[(2)]~~ (3) registration shall be reopened on
2 the Monday following the election;

3 ~~[(3)]~~ (4) for purposes of a municipal or
4 school election, the registration period for those precincts
5 within the municipality or school district is closed at 5:00
6 p.m. on the twenty-eighth day immediately preceding the
7 municipal or school election and is opened again on the Monday
8 following the election;

9 ~~[(4)]~~ (5) during the period when registration
10 is closed, the county clerk shall receive certificates of
11 registration and other documents pertaining thereto but, except
12 for certificates of registration received from an early voting
13 site, shall not file ~~[the]~~ any certificate of registration in
14 the registration book until the Monday following the election,
15 at which time a voter information document shall be mailed to
16 the registrant at the address shown on the certificate of
17 registration;

18 ~~[(5)]~~ (6) when the twenty-eighth day prior to
19 any election referred to in this section is a Saturday, Sunday
20 or legal holiday, registration shall be closed at 5:00 p.m. of
21 the next succeeding regular business day for the office of the
22 county clerk; and

23 ~~[(6)]~~ (7) the county clerk shall accept for
24 filing any certificate of registration that is subscribed and
25 dated on or before the twenty-eighth day preceding the election

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underscored material = new
[bracketed material] = delete

1 and:

2 (a) received by the county clerk before
3 5:00 p.m. on the Friday immediately following the close of
4 registration;

5 (b) mailed and postmarked not less than
6 twenty-eight days prior to any election referred to in this
7 section; or

8 (c) accepted at a state agency
9 designated pursuant to Section 1-4-5.2 NMSA 1978.

10 B. For federal qualified electors and overseas
11 voters, the county clerk shall accept a certificate of
12 registration by electronic transmission from a voter qualified
13 to apply for and vote by absentee ballot in the county if the
14 transmission is received before 5:00 p.m. on the Friday
15 immediately preceding the election."

16 Section 5. Section 1-12-8 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 247, as amended) is amended to read:

18 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

19 A. A person shall be permitted to vote on a
20 provisional paper ballot even though the person's original
21 certificate of registration cannot be found in the county
22 register or even if the person's name does not appear on the
23 signature roster, provided:

24 (1) the person's residence is within the
25 boundaries of the county in which the person offers to vote;

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1 (2) the person's name is not on the list of
2 persons submitting absentee ballots; and

3 (3) the person executes a statement swearing
4 or affirming to the best of the person's knowledge that the
5 person is a qualified elector, is currently registered and
6 eligible to vote in that county and has not cast a ballot or
7 voted in that election.

8 B. A person shall vote on a provisional ballot if
9 the person is not registered, or is not registered in the
10 correct precinct, and attempts to register to vote at an early
11 voting site, but the early voting site does not have real-time
12 access to the statewide electronic voter file and the person
13 would otherwise be eligible to vote at the early voting site.

14 [~~B.~~] C. A voter shall vote on a provisional paper
15 ballot if the voter:

16 (1) has not previously voted in a general
17 election in New Mexico or has been purged from the voter list;

18 (2) registered to vote by mail;

19 (3) did not submit the physical form of the
20 required voter identification with the certificate of
21 registration form; and

22 (4) does not present to the election judge a
23 physical form of the required voter identification.

24 [~~C.~~] D. A voter shall vote on a provisional ballot
25 in accordance with the provisions of Section 1-12-7.1 NMSA 1978

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1 if the voter does not provide the required voter identification
2 to the election judge.

3 ~~[D.]~~ E. An election judge shall have the voter sign
4 the signature roster or application to vote and issue the voter
5 a provisional paper ballot, an outer envelope and an official
6 inner envelope. The voter shall vote on the provisional paper
7 ballot in secrecy and, when done, place the ballot in the
8 official inner envelope and place the official inner envelope
9 in the outer envelope and return it to the precinct officer.
10 The election judge shall ensure that the required information
11 is completed on the outer envelope, have the voter sign it in
12 the appropriate place and place it in an envelope designated
13 for provisional paper ballots.

14 ~~[E.]~~ F. Knowingly executing a false statement
15 constitutes perjury as provided in the Criminal Code of this
16 state, and voting on the basis of such falsely executed
17 statement constitutes fraudulent voting."

18 Section 6. Section 1-12-20 NMSA 1978 (being Laws 1969,
19 Chapter 240, Section 273, as amended) is amended to read:

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

23 A. the person ~~[presenting himself]~~ who has come to
24 vote is not registered and is not a qualified elector;

25 B. the person ~~[presenting himself]~~ who has come to

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1 vote is listed on the purge list placed with the signature
2 rosters or is listed among those persons in the precinct from
3 whom an absentee ballot was received;

4 C. the person [~~presenting himself~~] who has come to
5 vote is improperly registered because [~~he~~] the person is not a
6 qualified elector;

7 D. in the case of a primary election, the person
8 [~~presenting himself~~] who has come to vote is not affiliated
9 with a political party represented on the ballot; or

10 E. in the case of an absentee ballot, the official
11 outer envelope of the absentee voter has been opened prior to
12 the counting of the ballots."

13 Section 7. Section 1-12-25.4 NMSA 1978 (being Laws 2003,
14 Chapter 356, Section 7, as amended) is amended to read:

15 "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

16 A. Upon closing of the polls, provisional paper
17 ballots shall be delivered to the county clerk, who shall
18 determine if the ballots will be counted prior to certification
19 of the election.

20 B. A provisional paper ballot shall not be counted
21 if the registered voter did not sign either the signature
22 roster or, in the case of a person registering to vote at an
23 early voting site, the application to vote or the ballot's
24 envelope.

25 C. If there is no record of the [~~voter~~] person ever

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1 having been registered in the county, the ~~[voter]~~ person shall
2 be offered the opportunity to register and the provisional
3 paper ballot shall not be counted; provided that this
4 subsection does not apply to a provisional ballot of a
5 qualified elector that registered to vote at an early voting
6 site.

7 D. If the voter was registered in the county, the
8 registration was later canceled and the county clerk determines
9 that the cancellation was in error, the voter's registration
10 shall be immediately restored and the provisional paper ballot
11 counted.

12 E. If the county clerk determines that the
13 cancellation was not in error, the voter shall be offered the
14 opportunity to register at the voter's correct address, and the
15 provisional paper ballot shall not be counted.

16 F. If the voter is a registered voter in the
17 county, but has voted on a provisional paper ballot at a
18 polling place other than the voter's designated polling place,
19 the county canvassing board shall ensure that only those votes
20 for the positions or measures for which the voter was eligible
21 to vote are counted.

22 G. If the county clerk finds that the voter who
23 voted on a provisional paper ballot ~~[at the polls]~~ has also
24 voted ~~[an absentee]~~ another ballot in that election, the
25 provisional paper ballot shall not be counted.

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

8 I. The secretary of state shall issue rules to
9 ensure securing the secrecy of the provisional paper ballots,
10 especially during canvassing, reviewing or recounting, and
11 protecting against fraud in the voting process."

12 Section 8. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.