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SENATE BILL 685

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

INTRODUCED BY

Dianna J. Duran

AN ACT

RELATING TO ELECTIONS; CHANGING PROVISIONS FOR THE DELIVERY AND HANDLING OF ABSENTEE BALLOTS; PROVIDING STANDARDS FOR THE OPERATION OF ALTERNATE VOTING LOCATIONS; CHANGING PROVISIONS FOR EARLY ABSENTEE VOTING; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

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

Section 1. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then

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1 determine if the applicant is a voter, an absent uniformed
2 services voter or an overseas voter.

3 B. If the applicant does not have a valid
4 certificate of registration on file in the county and is not a
5 federal qualified elector or if the applicant states that the
6 applicant is a federal qualified elector but the application
7 indicates the applicant is not a federal qualified elector, an
8 absentee ballot shall not be issued and the county clerk shall
9 mark the application "rejected" and file the application in a
10 separate file from those accepted.

11 C. The county clerk shall notify in writing each
12 applicant of the fact of acceptance or rejection of the
13 application and, if rejected, shall explain why the application
14 was rejected.

15 D. If the applicant has on file with the county a
16 valid certificate of registration that indicates that the
17 applicant is a voter who is a new registrant and who registered
18 by mail without submitting the required voter identification,
19 the county clerk shall notify the voter that the voter must
20 submit with the absentee ballot the required physical form of
21 identification. The county clerk shall note on the absentee
22 ballot register and signature roster that the applicant's
23 absentee ballot must be returned with the required
24 identification.

25 E. If the county clerk finds that the applicant is

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1 a voter other than a federal qualified elector or overseas
2 voter, the county clerk shall mark the application "accepted"
3 and, beginning twenty-eight days before the election, deliver
4 an absentee ballot to the voter in the county clerk's office or
5 mail to the applicant an absentee ballot and the required
6 envelopes for use in returning the ballot. If the county clerk
7 finds that the applicant is a federal qualified elector or
8 overseas voter, the county clerk shall mark the application
9 "accepted" and beginning forty-five days before the election,
10 mail to the applicant an absentee ballot and the required
11 envelopes for use in returning the ballot. Acceptance of an
12 application of a federal qualified elector constitutes
13 registration for the election in which the ballot is to be
14 cast. Acceptance of an application from an overseas voter who
15 is not an absent uniformed services voter constitutes a request
16 for changing information on the certificate of registration of
17 any such voter. An absent voter shall not be permitted to
18 change party affiliation during those periods when change of
19 party affiliation is prohibited by the Election Code. Upon
20 delivery of an absentee ballot to a voter in the county clerk's
21 office or mailing of an absentee ballot to an applicant who is
22 a voter, an appropriate designation shall be made on the
23 signature line of the signature roster next to the name of the
24 voter who has been provided or mailed an absentee ballot.

25 F. If an application for an absentee ballot is

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1 delivered in person to the county clerk and is accepted, the
2 county clerk shall provide the voter an absentee ballot and it
3 shall be marked by the applicant in a voting booth of a type
4 prescribed by the secretary of state, sealed in the proper
5 envelopes and otherwise properly executed and returned to the
6 county clerk or the clerk's authorized representative before
7 the voter leaves the office of the county clerk. The act of
8 marking the absentee ballot in the office of the county clerk
9 shall be a convenience to the voter in the delivery of the
10 absentee ballot and does not make the office of the county
11 clerk a polling place subject to the requirements of a polling
12 place in the Election Code other than is provided in this
13 subsection. It is unlawful to solicit votes, display or
14 otherwise make accessible any posters, signs or other forms of
15 campaign literature whatsoever in the clerk's office or
16 alternate voting location. In marking the absentee ballot, the
17 voter, pursuant to the provisions of Section 1-12-15 NMSA 1978,
18 may be assisted by one person of the voter's choice.

19 G. Absentee ballots may be marked in person at the
20 county clerk's office during the regular hours and days of
21 business beginning on the twenty-eighth day preceding the
22 election and from 10:00 a.m. to 6:00 p.m. on the Saturday
23 immediately prior to the date of the election. [~~In marking the~~
24 ~~absentee ballot, the voter, pursuant to the provisions of~~
25 ~~Section 1-12-15 NMSA 1978, may be assisted by one person of the~~

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1 ~~voter's choice.~~ If the county clerk establishes an additional
2 alternate voting location near the clerk's office, absentee
3 ballots may be marked in person at that location during the
4 regular hours and days of business beginning on the twenty-
5 eighth day preceding the election and during the hours for
6 voting at alternate voting locations commencing on the third
7 Saturday prior to the election through the Saturday immediately
8 prior to the election.

9 ~~[G.]~~ H. Absentee ballots shall be ~~[sent]~~ mailed to
10 applicants not later than on the ~~[Friday]~~ Wednesday immediately
11 prior to the date of the election. Applications received on or
12 after the Wednesday immediately preceding the election may be
13 sent to the applicant electronically at the applicant's
14 request, but not later than the Saturday immediately preceding
15 the election, in accordance with the procedures for electronic
16 transmission of ballots as provided in Section 1-6-9 NMSA 1978.

17 ~~[H.]~~ I. An absentee ballot shall not be delivered
18 or mailed by the county clerk to any person other than the
19 applicant for such ballot.

20 ~~[I.]~~ J. The secretary of state and each county
21 clerk shall make reasonable efforts to publicize and inform
22 voters of the times and locations for absentee voting;
23 provided, however, that notice is provided at least ten days
24 before early voting begins.

25 ~~[J.]~~ K. The secretary of state shall establish

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1 procedures for the submittal, when required by federal law, of
2 required voter identification with mailed-in absentee ballots."

3 Section 2. Section 1-6-5.7 NMSA 1978 (being Laws 2005,
4 Chapter 270, Section 40) is amended to read:

5 "1-6-5.7. EARLY VOTING--USE OF ABSENTEE VOTING
6 PROCEDURES--ALTERNATE VOTING LOCATIONS.--

7 A. Commencing on the third Saturday prior to an
8 election and ending on the Saturday immediately preceding the
9 election, an early voter may vote in person on a voting system
10 at an alternate voting location established by the county
11 clerk.

12 B. In class A counties with more than two hundred
13 thousand registered voters, the county clerk shall establish
14 not [~~less~~] fewer than twelve alternate voting locations as a
15 convenience to the voters. For class A counties with two
16 hundred thousand registered voters or fewer, the county clerk
17 shall establish not [~~less~~] fewer than four alternate voting
18 locations. In non-class A counties with more than ten thousand
19 registered voters, the county clerk shall establish at least
20 one alternate voting location. In non-class A counties with
21 ten thousand registered voters or fewer, early voting shall be
22 conducted in the office of the county clerk or at such
23 [~~alternative~~] alternate locations as may be designated by the
24 county clerk. [~~Early voting may be done at an alternate~~
25 ~~location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday,~~

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1 ~~and 10:00 a.m. to 6:00 p.m., Saturday through the Saturday~~
2 ~~immediately prior to the election.~~

3 B.] C. Not later than ninety days before each
4 primary and general election, the county clerk shall publicly
5 fix the hours of operation for alternate voting locations in
6 the county. Alternate voting locations shall be open each day
7 of early voting for at least eight consecutive hours, which may
8 include evenings. Alternate voting locations may be closed
9 Sundays and Mondays during the early voting period.

10 D. Each alternate voting location shall:

11 (1) have ballots available for voters from
12 every precinct in the county;

13 (2) have at least one optical scan tabulator
14 programmed to read every ballot style in the county;

15 (3) have at least one voting system available
16 to assist disabled voters to cast and record their votes;

17 (4) have a broadband internet connection;

18 (5) have sufficient spaces for at least five
19 voters to simultaneously and privately mark their ballots, with
20 at least one of those spaces wheelchair-accessible;

21 (6) have a secure area for storage of ballots
22 or storage of a ballot on demand printing system; and

23 (7) be in a location that is accessible and
24 compliant with the requirements of the federal Americans with
25 Disabilities Act of 1990.

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1 E. When voting early, the voter shall provide the
2 required voter identification to the county clerk or the
3 clerk's authorized representative. If the voter does not
4 provide the required voter identification, the voter shall be
5 allowed to vote on a provisional ballot. If the voter provides
6 the required identification, the voter shall be allowed to vote
7 after subscribing an application to vote in accordance with
8 secretary of state rules. The county clerk or the clerk's
9 authorized representative shall make an appropriate designation
10 on the signature roster next to the voter's name indicating
11 that the voter has voted early."

12 Section 3. Section 1-6-6 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 132, as amended by Laws 2003, Chapter 356,
14 Section 21 and by Laws 2003, Chapter 357, Section 3) is amended
15 to read:

16 "1-6-6. ABSENTEE BALLOT REGISTER.--

17 A. For each election, the county clerk shall keep
18 an "absentee ballot register", in which ~~[he]~~ the county clerk
19 shall enter:

- 20 (1) the name and address of each absentee
21 ballot applicant;
22 (2) the date and time of receipt of the
23 application;
24 (3) whether the application was accepted or
25 rejected;

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1 (4) the date of issue of an absentee ballot in
2 the county clerk's office or at an alternate location or the
3 mailing of an absentee ballot to the applicant;

4 (5) the applicant's precinct;

5 (6) whether the applicant is a voter, [~~a~~
6 ~~federal voter~~] a federal qualified elector or an overseas
7 voter;

8 (7) whether the voter is required to submit
9 identification pursuant to Section 1-6-5 NMSA 1978; and

10 (8) the date and time the completed absentee
11 ballot was received from the applicant by the county clerk or
12 the absent voter voted early in person in the county clerk's
13 office or at an alternate location.

14 B. Within twenty-four hours after receipt of a
15 voter's application for an absentee ballot, the county clerk
16 shall mail either the ballot [~~if it is within twenty-eight days~~
17 ~~of election day~~] or a notice of rejection to the applicant if
18 it is within twenty-two days of election day. For each
19 application for an absentee ballot received twenty-three or
20 more days before the election, the county clerk shall mail
21 either the ballot or a notice of rejection to the applicant as
22 soon as practicable, provided it is sent not later than twenty-
23 two days before the election.

24 C. The absentee ballot register is a public record
25 open to public inspection in the county clerk's office during

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1 regular office hours. The county clerk shall have an updated
2 absentee ballot register available for public inspection Monday
3 through Friday during regular office hours.

4 D. The county clerk shall deliver to the absent
5 voter precinct on election day a complete list of all absentee
6 ballot applicants and early voters with applicable information
7 shown in the absentee ballot register for each applicant and
8 early voter up to 6:00 p.m. on the Saturday preceding the
9 election. The county clerk shall deliver a signature roster
10 containing the same information as the lists to the absent
11 voter precinct board.

12 E. Upon request, the county clerk shall transmit to
13 [~~the secretary of state and to~~] the county [~~chairman~~] chair of
14 each of the major political parties in the county a complete
15 copy of entries made in the absentee ballot register. Such
16 transmissions shall be made once each week beginning four weeks
17 immediately prior to the election. A final copy shall be
18 transmitted on the Saturday immediately following the election.

19 F. If the county clerk has available the technology
20 to do so, at the request of a candidate or chair of a political
21 party of the county, the county clerk shall electronically
22 transmit to the candidate or chair via the internet the
23 information, when updated, on the absentee ballot register
24 indicating voters who have requested absentee ballots, returned
25 their absentee ballots or voted early in person."

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1 Section 4. Section 1-6-10 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 136, as amended) is amended to read:

3 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--

4 A. The county clerk shall mark on each completed
5 official mailing envelope the date and time of receipt in the
6 clerk's office, record this information in the absentee ballot
7 register and safely keep the official mailing envelope unopened
8 in a locked and number-sealed ballot box until it is delivered
9 to the proper absent voter precinct board or until it is
10 canceled and destroyed in accordance with law.

11 B. The county clerk shall accept completed official
12 mailing envelopes until 7:00 p.m. on election day and the
13 county clerk or absent voter precinct board shall accept
14 completed official mailing envelopes from precincts within the
15 county of the voters who turned in their absentee ballots at
16 their precinct by the close of polls on election day. Any
17 completed official mailing envelope received after that time
18 shall not be delivered to a precinct board but shall be
19 preserved by the county clerk until the time for election
20 contests has expired. In the absence of a restraining order
21 after expiration of the time for election contests, the county
22 clerk shall destroy all late official mailing envelopes without
23 opening or permitting the contents to be examined, cast,
24 counted or canvassed. Before their destruction, the county
25 clerk shall count the numbers of late ballots from voters,

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1 federal voters, overseas citizen voters and federal qualified
2 electors and report the number from each category to the
3 secretary of state.

4 ~~[G. At 5:00 p.m. on the Monday immediately~~
5 ~~preceding the date of election, the county clerk shall record~~
6 ~~the numbers of the unused absentee ballots and shall publicly~~
7 ~~destroy in the county clerk's office all such unused ballots.~~
8 ~~The county clerk shall execute a certificate of destruction,~~
9 ~~which shall include the numbers on the absentee ballots~~
10 ~~destroyed. A copy of the certificate of destruction shall be~~
11 ~~sent to the secretary of state.]"~~

12 Section 5. Section 1-6-14 NMSA 1978 (being Laws 1971,
13 Chapter 317, Section 11, as amended) is amended to read:

14 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
15 PRECINCT BOARDS.--

16 A. Before opening an official mailing envelope, the
17 presiding judge and the election judges shall determine that
18 the required information has been completed on the reverse side
19 of the official mailing envelope.

20 B. If the voter's signature is missing, the
21 presiding judge shall write "Rejected" on the front of the
22 official mailing envelope. The election clerks shall enter the
23 voter's name in the signature rosters and shall write the
24 notation "Rejected--Missing Signature" in the "Notations"
25 column of the signature rosters. The presiding judge shall

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1 place the official mailing envelope unopened in an envelope
2 provided for rejected ballots, seal the envelope and write the
3 voter's name on the front of the envelope and deposit it in the
4 locked ballot box.

5 C. A lawfully appointed challenger may examine the
6 official mailing envelope and may challenge the ballot of any
7 absent voter for the following reasons:

8 (1) the official mailing envelope has been
9 opened prior to being received by the absent voter precinct
10 board; or

11 (2) the person offering to vote is not a
12 federal voter, federal qualified elector, overseas voter or
13 voter as provided in the Election Code.

14 Upon the challenge of an absentee ballot, the election
15 judges and the presiding election judge shall follow the same
16 procedure as when ballots are challenged when a person attempts
17 to vote in person. If a challenge is upheld, the official
18 mailing envelope shall not be opened but shall be placed in an
19 envelope provided for challenged ballots. The same procedure
20 shall be followed in canvassing and determining the validity of
21 challenged absentee ballots as with other challenged ballots.

22 D. If the official mailing envelope has been
23 properly subscribed and the voter has not been challenged:

24 (1) the election clerks shall enter the absent
25 voter's name and residence address as shown on the official

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1 mailing envelope in the signature rosters and shall mark the
2 notation "AB" opposite the voter's name in the "Notations"
3 column of the signature rosters; and

4 (2) only between 8:00 a.m. and [~~5:00~~] 10:00
5 p.m. on the five days preceding election day, including
6 Saturday and Sunday, and beginning at 7:00 a.m. on election
7 day, under the personal supervision of the presiding election
8 judge, shall the election judges open the official mailing
9 envelope and the official inner envelope and insert the
10 enclosed ballot into an electronic voting machine to be
11 registered and retained until votes are counted and canvassed
12 following the closing of the polls on election night.

13 E. It is unlawful for a person to disclose the
14 results of a count and tally or the registration on a voting
15 machine of absentee ballots prior to the closing of the polls.

16 F. Absentee ballots shall be counted and tallied on
17 an electronic voting machine as provided in the Election Code.

18 G. Absent voter precinct polls shall close in
19 accordance with Section 1-6-23 NMSA 1978, and the results of
20 the election shall be certified as prescribed by the secretary
21 of state.

22 H. If an absentee ballot does not contain the
23 identification required pursuant to Subsection D of Section
24 1-6-5 NMSA 1978, it shall be handled as a provisional paper
25 ballot in accordance with the Election Code."

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1 Section 6. REPEAL.--Section 1-6-7 NMSA 1978 (being Laws
2 1969, Chapter 240, Section 133, as amended) is repealed.

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