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HOUSE BILL 103

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO ELECTIONS; REQUIRING ALL VOTERS TO PRESENT IDENTIFICATION BEFORE VOTING; PROVIDING FOR FREE IDENTIFICATION CARDS TO BE ISSUED BY THE MOTOR VEHICLE DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR XEROGRAPHIC COPIES OF A VOTER'S IDENTIFICATION DOCUMENT; PROVIDING FOR PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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] VOTER IDENTIFICATION--PROVISION OF XEROGRAPHIC COPIES.--At the request of a voter, the state shall provide at no charge a xerographic copy of the voter's required voter identification document when the voter presents the

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1 document during normal business hours at any state office that
2 is capable of making such copies."

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

5 "1-1-24. REQUIRED VOTER IDENTIFICATION.--As used in the
6 Election Code, "required voter identification" or "physical
7 form of identification" means: [~~any of the following forms of~~
8 ~~identification as chosen by the voter:~~

9 A. ~~a physical form of identification, which may be:~~
10 ~~(1) an original or copy of a current and valid~~
11 ~~photo identification with or without an address, which address~~
12 ~~is not required to match the voter's certificate of~~
13 ~~registration; or~~

14 ~~(2) an original or copy of a utility bill,~~
15 ~~bank statement, government check, paycheck, student~~
16 ~~identification card or other government document, including~~
17 ~~identification issued by an Indian nation, tribe or pueblo,~~
18 ~~that shows the name and address of the person, the address of~~
19 ~~which is not required to match the voter's certificate of~~
20 ~~registration; or~~

21 B. ~~a verbal or written statement by the voter of~~
22 ~~the voter's name, registration address and year of birth;~~
23 ~~provided, however, that the statement of the voter's name need~~
24 ~~not contain the voter's middle initial or suffix]~~

25 A. a document that:

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1 (1) shows the name of the person to whom the
2 document was issued, and:

3 (a) the name conforms to the name in the
4 person's voter registration record; or

5 (b) at least two members of the precinct
6 board determine that the document sufficiently matches the
7 information on the voter's certificate of registration to
8 identify the person;

9 (2) shows a photograph of the person to whom
10 the document was issued;

11 (3) includes an expiration date, and if
12 expired, has not been expired for more than eight years; and

13 (4) was issued by the United States or the
14 state of New Mexico, including any public post-secondary
15 educational institution;

16 B. a document that:

17 (1) shows the name of the person to whom the
18 document was issued, and:

19 (a) the name conforms to the name of the
20 person's certificate of registration; or

21 (b) at least two members of the precinct
22 board determine that the document sufficiently matches the
23 information on the voter's certificate of registration to
24 identify the person;

25 (2) includes the person's tribal enrollment

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1 number; and

2 (3) was issued by an Indian nation, tribe or
3 pueblo; or

4 C. in the case of a voter who is voting absentee by
5 mail and who is not required to submit identification pursuant
6 to the federal Help America Vote Act of 2002, the voter's
7 driver's license number or the identification card number on
8 the voter's identification card issued to the voter by the
9 motor vehicle division of the taxation and revenue department."

10 SECTION 3. Section 1-4-5.1 NMSA 1978 (being Laws 1993,
11 Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
12 as amended) is amended to read:

13 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

14 A. A qualified elector may apply for registration
15 by mail, in the office of the secretary of state or county
16 clerk or with a registration agent or officer.

17 B. A person may request certificate of registration
18 forms from the secretary of state or any county clerk in
19 person, by telephone or by mail for that person or for other
20 persons.

21 C. Except as provided in Subsection D of this
22 section, a qualified elector who wishes to register to vote
23 shall fill out completely and sign the certificate of
24 registration. The qualified elector may seek the assistance of
25 any person in completing the certificate of registration.

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1 D. A qualified elector who has filed for an order
2 of protection pursuant to the provisions of the Family Violence
3 Protection Act and who presents a copy of that order from a
4 state or tribal court to the registration officer shall not be
5 required to provide physical residence address information on
6 the certificate of registration.

7 E. Completed certificates of registration may be
8 mailed or presented in person by the registrant or any other
9 person to the secretary of state or presented in person by the
10 registrant or any other person to the county clerk of the
11 county in which the registrant resides.

12 F. If the registrant wishes to vote in the next
13 election, the completed and signed certificate of registration
14 shall be delivered or mailed and postmarked at least twenty-
15 eight days before the election.

16 G. Upon receipt of a certificate of registration,
17 the secretary of state shall send the certificate to the county
18 clerk in the county where the qualified elector resides.

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

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1 I. The secretary of state shall prescribe the form
2 of the certificate of registration, which form shall be a
3 postpaid mail-in format and shall be printed in Spanish and
4 English. The certificate of registration form shall be clear
5 and understandable to the average person and shall include
6 brief but sufficient instructions to enable the qualified
7 elector to complete the form without assistance. The form
8 shall also include:

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

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

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

19 (4) a statement informing the applicant that:

20 (a) if the form is submitted by mail by
21 the applicant and the applicant is registering for the first
22 time in New Mexico, the applicant must submit with the form a
23 copy of ~~[1) a current and valid photo identification; or 2) a~~
24 ~~current utility bill, bank statement, government check,~~
25 ~~paycheck, student identification card or other government~~

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1 ~~document, including identification issued by an Indian nation,~~
2 ~~tribe or pueblo, that shows the name and current address of the~~
3 ~~applicant]~~ the required voter identification; and

4 (b) ~~[if the applicant does not submit~~
5 ~~the required identification]~~ the applicant will be required to
6 ~~[do so]~~ submit the required voter identification when voting in
7 person or absentee by mail; and

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

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

13 "1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED
14 ELECTOR--OVERSEAS VOTER.--

15 A. Application by a federal qualified elector or an
16 overseas voter for an absentee ballot shall be made on the
17 official postcard form prescribed or authorized by the federal
18 government to the county clerk of the county of the applicant's
19 residence. The form shall allow the applicant to receive an
20 absentee ballot for all elections within an election cycle.

21 B. Application by a voter for an absentee ballot
22 shall be made only on a form prescribed by the secretary of
23 state in accordance with federal law. The form shall identify
24 the applicant and contain information to establish the
25 applicant's qualification for issuance of an absentee ballot

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1 under the Absent Voter Act; provided that on the application
2 form for a general election ballot there shall be no box, space
3 or place provided for designation of the voter's political
4 party affiliation. The form shall also include a notice that
5 it is a fourth degree felony to falsify any information on the
6 form or sign a person's name other than one's own name on the
7 form.

8 C. Each application for an absentee ballot shall be
9 signed by the applicant and shall require the applicant's
10 printed name, registration address and year of birth to be
11 supplied by the applicant [~~which shall constitute the required~~
12 ~~form of identification, except for new registrants who have~~
13 ~~registered by mail and at that time did not provide acceptable~~
14 ~~identification. The secretary of state shall issue rules to~~
15 ~~exempt voters from submitting identification only as required~~
16 ~~by federal law and shall review and, if necessary, update these~~
17 ~~rules no later than March 15 of even-numbered years].~~

18 D. An application for an absentee ballot by a
19 federal qualified elector or an overseas voter shall be
20 accepted at any time preceding the general election.

21 E. A person who willfully and with knowledge and
22 intent to deceive or mislead any voter, precinct board,
23 canvassing board, county clerk or other election official and
24 who falsifies any information on an absentee ballot request
25 form or who affixes a signature or mark other than the person's

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1 own on an absentee ballot request form is guilty of a fourth
2 degree felony."

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

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

6 A. The county clerk shall mark each completed
7 absentee ballot application with the date and time of receipt
8 in the clerk's office and enter the required information in the
9 absentee ballot register. The county clerk shall then
10 determine if the applicant is a voter, an absent uniformed
11 services voter or an overseas voter.

12 B. If the applicant does not have a valid
13 certificate of registration on file in the county and is not a
14 federal qualified elector or if the applicant states that the
15 applicant is a federal qualified elector but the application
16 indicates the applicant is not a federal qualified elector, an
17 absentee ballot shall not be issued and the county clerk shall
18 mark the application "rejected" and file the application in a
19 separate file from those accepted.

20 C. The county clerk shall notify in writing each
21 applicant of the fact of acceptance or rejection of the
22 application and, if rejected, shall explain why the application
23 was rejected.

24 D. ~~[If the applicant has on file with the county a~~
25 ~~valid certificate of registration that indicates that the~~

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1 ~~applicant is a voter who is a new registrant and who registered~~
2 ~~by mail without submitting the required voter identification]~~

3 The county clerk shall notify the voter that the voter must
4 submit with the absentee ballot a copy of the required
5 ~~[physical form of]~~ voter identification. ~~[The county clerk~~
6 ~~shall note on the absentee ballot register and signature roster~~
7 ~~that the applicant's absentee ballot must be returned with the~~
8 ~~required identification.]~~

9 E. If the county clerk finds that the applicant is
10 a voter other than a federal qualified elector or overseas
11 voter, the county clerk shall mark the application "accepted"
12 and, beginning twenty-eight days before the election, deliver
13 an absentee ballot to the voter in the county clerk's office or
14 mail to the applicant an absentee ballot and the required
15 envelopes for use in returning the ballot. If the county clerk
16 finds that the applicant is a federal qualified elector or
17 overseas voter, the county clerk shall mark the application
18 "accepted" and beginning forty-five days before the election,
19 mail to the applicant an absentee ballot and the required
20 envelopes for use in returning the ballot. Acceptance of an
21 application of a federal qualified elector constitutes
22 registration for the election in which the ballot is to be
23 cast. Acceptance of an application from an overseas voter who
24 is not an absent uniformed services voter constitutes a request
25 for changing information on the certificate of registration of

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1 any such voter. An absent voter shall not be permitted to
2 change party affiliation during those periods when change of
3 party affiliation is prohibited by the Election Code. Upon
4 delivery of an absentee ballot to a voter in the county clerk's
5 office or mailing of an absentee ballot to an applicant who is
6 a voter, an appropriate designation shall be made on the
7 signature line of the signature roster next to the name of the
8 voter who has been provided or mailed an absentee ballot.

9 F. Absentee ballots may be marked in person at the
10 county clerk's office during the regular hours and days of
11 business beginning on the twenty-eighth day preceding the
12 election and from 10:00 a.m. to 6:00 p.m. on the Saturday
13 immediately prior to the date of the election. The act of
14 marking the absentee ballot in the office of the county clerk
15 shall be a convenience to the voter in the delivery of the
16 absentee ballot and does not make the office of the county
17 clerk a polling place subject to the requirements of a polling
18 place in the Election Code. If the county clerk establishes an
19 additional alternate voting location near the clerk's office,
20 absentee ballots may be marked in person at that location
21 during the regular hours and days of business beginning on the
22 twenty-eighth day preceding the election and during the hours
23 for voting at alternate voting locations commencing on the
24 third Saturday prior to the election through the Saturday
25 immediately prior to the election. The additional alternate

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1 voting location shall be operated by the county clerk and the
2 county clerk's staff.

3 G. When marking an absentee ballot in person at the
4 county clerk's office, the voter shall provide the required
5 voter identification to the county clerk or the clerk's
6 authorized representative. If the voter does not provide the
7 required voter identification, the voter shall be allowed to
8 vote on a provisional ballot. If the voter provides the
9 required voter identification, the voter, after subscribing an
10 application for an absentee ballot, shall be allowed to vote by
11 inserting the ballot into an optical scan tabulator certified
12 for in-person absentee voting at the county clerk's office.
13 The county clerk or the clerk's authorized representative shall
14 make an appropriate designation indicating that the voter has
15 voted absentee. In marking the absentee ballot, the voter may
16 be assisted pursuant to the provisions of Section 1-12-15 NMSA
17 1978.

18 H. Absentee ballots shall be sent to applicants not
19 later than on the Friday immediately prior to the date of the
20 election.

21 I. An absentee ballot shall not be delivered or
22 mailed by the county clerk to any person other than the
23 applicant for such ballot.

24 J. The secretary of state and each county clerk
25 shall make reasonable efforts to publicize and inform voters of

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1 the times and locations for absentee voting; provided, however,
2 that notice is provided at least ten days before early voting
3 begins.

4 K. The secretary of state shall establish
5 procedures for ~~[the submittal, when required by federal law]~~
6 submission of the required voter identification with mailed-in
7 absentee ballots.

8 L. An absentee ballot that is returned without a
9 copy of the required voter identification shall be considered
10 to be and handled as a provisional ballot.

11 ~~[E.]~~ M. It is unlawful to electioneer in the county
12 clerk's office or in any alternate voting location."

13 SECTION 6. Section 1-6-8 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 134, as amended) is amended to read:

15 "1-6-8. ABSENTEE BALLOT ENVELOPES.--

16 A. The secretary of state shall prescribe the form
17 of, procure and distribute to each county clerk a supply of:

18 (1) official inner envelopes for use in
19 sealing the completed absentee ballot;

20 (2) official mailing envelopes for use in
21 returning the official inner envelope to the county clerk;
22 provided the official mailing envelope for absentee ballots in
23 a general election shall contain no designation of party
24 affiliation;

25 (3) absentee ballot instructions, describing

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1 proper methods for completion of the ballot and returning it;
2 and

3 (4) official transmittal envelopes for use by
4 the county clerk in mailing absentee ballot materials.

5 B. Official transmittal envelopes and official
6 mailing envelopes for transmission of absentee ballot materials
7 to and from the county clerk and federal qualified electors
8 shall be printed in the form prescribed by the federal
9 Uniformed and Overseas Citizens Absentee Voting Act. Official
10 transmittal envelopes and official mailing envelopes for
11 transmission of absentee ballot materials to and from the
12 county clerk and voters shall be printed in black in
13 substantially similar form. All official inner envelopes shall
14 be printed in black.

15 C. The reverse of each official mailing envelope
16 shall contain a form to be executed by the voter completing the
17 absentee ballot. The form shall identify the voter and shall
18 contain the following statement: "I will not vote in this
19 election other than by the enclosed ballot. I will not receive
20 or offer any compensation or reward for giving or withholding
21 any vote.". In addition, the form shall contain a notice that
22 it is a fourth degree felony to commit false voting or to
23 falsely swear pursuant to Section 1-20-8 or 1-20-10 NMSA 1978.

24 D. The official mailing envelope shall contain a
25 space for the voter to record the voter's name, registration

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1 address and year of birth. The envelope shall have a security
2 flap to cover this information."

3 SECTION 7. A new section of Chapter 1, Article 12 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] CONDUCT OF ELECTION--CHALLENGES TO A
6 VOTER'S IDENTIFICATION.--If a challenge is interposed because
7 the required voter identification that a voter presents does
8 not conform to the requirements of Section 1-1-24 NMSA 1978,
9 the voter shall be allowed to vote on a provisional ballot."

10 SECTION 8. Section 1-12-20 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 273, as amended) is amended to read:

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

15 A. the person offering to vote is not registered to
16 vote;

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

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

21 D. the person offering to vote is improperly
22 registered because the person is not a qualified elector; [~~or~~]

23 E. the required voter identification that the
24 person presents does not conform to the requirements of Section
25 1-1-24 NMSA 1978; or

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1 ~~[E-]~~ F. in the case of a primary election, the
2 person desiring to vote is not affiliated with a political
3 party represented on the ballot."

4 **SECTION 9.** Section 1-12-25.3 NMSA 1978 (being Laws 2003,
5 Chapter 356, Section 6, as amended) is amended to read:

6 "1-12-25.3. PROVISIONAL PAPER BALLOTS--REQUIRED
7 INFORMATION.--

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

- 10 (1) the name and signature of the voter;
- 11 (2) the voter's registered address, both
12 present and former if applicable;
- 13 (3) the voter's date of birth;
- 14 (4) the reason for using the ballot;
- 15 (5) the precinct and the polling place at
16 which the voter has voted; and
- 17 (6) sufficient space to list the disposition
18 of the ballot after review by the county clerk.

19 B. A provisional paper ballot shall not be
20 rejected for lack of the information required by this section
21 and shall be qualified as long as the voter ~~[provides]~~ has
22 provided a valid signature and sufficient information for the
23 clerk to determine the voter is a qualified elector and has
24 provided a copy of the required voter identification."

25 **SECTION 10.** A new section of Chapter 1, Article 20 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] PROHIBITING FALSE VOTING--POLL
3 WORKERS--COUNTY CLERKS--PENALTY.--

4 A. A poll worker who intentionally and knowingly
5 allows a person who is not a qualified elector to cast a
6 ballot in an election shall upon conviction be fined five
7 hundred dollars (\$500) per incident, and the county clerk of
8 the county in which the offense occurred shall be fined five
9 hundred dollars (\$500) per incident.

10 B. Neither the state nor a political subdivision
11 of the state shall indemnify a poll worker or county clerk
12 for a fine levied pursuant to this section."

13 SECTION 11. Section 66-5-408 NMSA 1978 (being Laws
14 1978, Chapter 35, Section 335, as amended) is amended to
15 read:

16 "66-5-408. FEES--EXCEPTIONS.--

17 A. Upon application for an identification card
18 with a four-year term, there shall be paid to the department
19 a fee of five dollars (\$5.00). Upon application for an
20 identification card with an eight-year term, there shall be
21 paid to the department a fee of ten dollars (\$10.00). A fee
22 shall not be charged to an applicant for an identification
23 card if the applicant:

24 (1) is at least seventy-five years of age;
25 or

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1 (2) will be at least eighteen years of age
2 on the date of the next general election and the applicant
3 signs a statement requesting an identification card at no
4 cost for voter identification purposes.

5 B. The department with the approval of the
6 governor may increase the amount of the identification card
7 fee by an amount not to exceed three dollars (\$3.00) for the
8 purpose of implementing an enhanced licensing system;
9 provided that for an identification card issued for an eight-
10 year period, the amount of the fee shall be twice the amount
11 charged for other identification cards. The additional
12 amounts collected pursuant to this subsection are
13 appropriated to the department to defray the expense of the
14 new system of licensing and for use as set forth in the
15 provisions of Subsection F of Section 66-6-13 NMSA 1978.
16 Unexpended and unencumbered balances from fees collected
17 pursuant to the provisions of this subsection at the end of
18 any fiscal year shall not revert to the general fund but
19 shall be expended by the department in fiscal year 2010 and
20 subsequent fiscal years."

21 **SECTION 12. REPEAL.**--Section 1-12-4.1 NMSA 1978 (being
22 Laws 2005, Chapter 270, Section 59) is repealed.

23 **SECTION 13. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is July 1, 2013.