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SENATE BILL

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

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO ELECTIONS; ALLOWING A POLITICAL PARTY TO NOMINATE ANY QUALIFIED CANDIDATE, REGARDLESS OF THE CANDIDATE'S PARTY AFFILIATION, TO RUN UNDER ITS PARTY NAME IN AN ELECTION; ALLOWING A CANDIDATE'S NAME TO APPEAR MORE THAN ONCE ON A BALLOT IF THE CANDIDATE IS THE NOMINEE FOR MORE THAN ONE POLITICAL PARTY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 1-1-7.2 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended) is amended to read:

"1-1-7.2. PETITIONS--NOMINATIONS--SIGNATURES TO BE COUNTED.--

A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one

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1 candidate is to be elected to that office, and in that case, a
2 person may sign not more than the number of nominating
3 petitions equal to the number of candidates to be elected to
4 the office.

5 B. A person who signs a nominating petition shall
6 indicate the person's registration address. If the person does
7 not have a standard street address, the person may provide the
8 mailing address as shown on the person's certificate of
9 registration.

10 C. A signature shall be counted on a nominating
11 petition unless there is evidence presented that the petition
12 does not provide the information required by the nominating
13 petition for each person signing or the person signing:

14 (1) is not a voter of the state, district,
15 county or area to be represented by the office for which the
16 person seeking the nomination is a candidate;

17 (2) has signed more than one petition for the
18 same office, except as provided in Subsection A of this
19 section, and if the person has signed more than one petition
20 for the same office and in the same election cycle, none of the
21 challenged signatures from that person shall count toward the
22 total number of signatures required for any candidate for that
23 office;

24 (3) has signed one petition more than once, in
25 which case only one signature from that person shall count

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1 toward the total number of signatures required for that
2 candidate for office; or

3 ~~[(4) in a primary election, is not of the same~~
4 ~~political party as the candidate named in the nominating~~
5 ~~petition as shown by the signer's certificate of registration;~~
6 ~~or~~

7 ~~(5)]~~ (4) is not the person whose name appears
8 on the nominating petition.

9 D. The procedures set forth in this section shall
10 be used to validate signatures on any petition required by the
11 Election Code ~~[except that Paragraph (4) of Subsection C of~~
12 ~~this section shall not apply to petitions filed by unaffiliated~~
13 ~~candidates or petitions filed by candidates of minor political~~
14 ~~parties]."~~

15 SECTION 2. Section 1-1-26 NMSA 1978 (being Laws 2019,
16 Chapter 212, Section 13) is amended to read:

17 "1-1-26. PETITIONS--NOMINATIONS--REQUIREMENTS BEFORE
18 SIGNED BY VOTERS--INVALIDATED PETITIONS.--

19 A. The following information shall be listed in the
20 appropriate space at the top of a nominating petition before
21 the petition has been signed by a voter:

- 22 (1) the candidate's name as it appears on the
- 23 candidate's certificate of registration;
- 24 (2) the address where the candidate resides;
- 25 (3) the office sought by the candidate;

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1 (4) if the office sought is a districted
2 office or a division within a judicial district or has been
3 assigned a position number for purposes of the election, the
4 district, division or position number of the office sought;

5 (5) if the office sought will be on the
6 general election ballot, the party [~~affiliation of the~~
7 ~~candidate~~] whose nomination the candidate is seeking or that
8 the candidate is unaffiliated with any qualified political
9 party; and

10 (6) if the office sought will be nominated at
11 a political party primary, the party affiliation of voters
12 permitted to sign the petition.

13 B. With or without a showing of fraud or a
14 reasonable opportunity for fraud, a nominating petition page,
15 including all signatures on the petition page, shall be invalid
16 if any of the information required by Subsection A of this
17 section is not listed on the petition before the petition page
18 is signed by a voter or if any of the required information is
19 subsequently changed in any way."

20 SECTION 3. Section 1-4-16 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 72, as amended) is amended to read:

22 "1-4-16. REGISTRATION--WHEN PARTY AFFILIATION SHALL NOT
23 BE MADE.--[A. ~~No~~] A designation of party affiliation shall not
24 be made or changed on an existing certificate of registration
25 at any time during which registration is closed.

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1 ~~[B. Every person appearing as a candidate on the~~
2 ~~primary or general election ballot shall be a candidate only~~
3 ~~under the name and party affiliation designation appearing on~~
4 ~~the person's existing certificate of registration on file in~~
5 ~~the county clerk's office on the date of the secretary of~~
6 ~~state's general election proclamation.]"~~

7 SECTION 4. Section 1-8-2 NMSA 1978 (being Laws 1969,
8 Chapter 240, Section 152, as amended) is amended to read:

9 "1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION--
10 DESIGNATED NOMINEES.--

11 A. If the rules of a minor political party require
12 nomination by political convention:

13 (1) the chair and secretary of the state
14 political convention shall certify to the secretary of state
15 the names of their party's nominees for United States senator,
16 United States representative, all elective state offices,
17 legislative offices elected from multicounty districts, [~~the~~
18 ~~public regulation commission~~] all elective judicial officers in
19 the judicial department and all offices representing a district
20 composed of more than one county; and

21 (2) the chair and secretary of the county
22 political convention shall certify to the county clerk the
23 names of their party's nominees for elected county offices and
24 for legislative offices elected from a district located wholly
25 within one county or that is composed of only one county.

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1 B. The names certified to the secretary of state
2 shall be filed on the twenty-third day following the primary
3 election in the year of the general election and shall be
4 accompanied by nominating petitions containing the signatures
5 of voters totaling not less than one percent of the total
6 number of votes cast for governor at the last preceding general
7 election at which a governor was elected:

- 8 (1) in the state for statewide offices; and
9 (2) in the district for offices other than
10 statewide offices.

11 The petition shall contain a statement that the voters
12 signing the petition are residents of the area to be
13 represented by the office for which the person being nominated
14 is a candidate.

15 C. The names certified to the county clerk shall be
16 filed on the twenty-third day following the primary election in
17 the year of the general election and shall be accompanied by a
18 nominating petition containing the signatures of voters
19 totaling not less than one percent of the total number of votes
20 cast for governor at the last preceding general election at
21 which a governor was elected:

- 22 (1) in the county for countywide offices; and
23 (2) in the district for offices other than
24 countywide offices.

25 The petition shall contain a statement that the voters

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1 signing the petition are residents of the area to be
2 represented by the office for which the person being nominated
3 is a candidate.

4 ~~[D. Except in the case of a political party~~
5 ~~certified in the year of the election, persons certified as~~
6 ~~candidates shall be members of that party on the day the~~
7 ~~secretary of state issues the general election proclamation.~~

8 ~~E. When a political party is certified in the year~~
9 ~~of the general election, and after the day the secretary of~~
10 ~~state issues the general election proclamation, a person~~
11 ~~certified as a candidate shall be:~~

12 ~~(1) a member of that party not later than the~~
13 ~~date the political party filed its rules and qualifying~~
14 ~~petitions pursuant to Sections 1-7-2 and 1-7-4 NMSA 1978; and~~

15 ~~(2) a resident in the district of the office~~
16 ~~for which the person is a candidate on the date of the~~
17 ~~secretary of state's proclamation for the general election or~~
18 ~~in the case of a person seeking the office of United States~~
19 ~~senator or United States representative, a resident within New~~
20 ~~Mexico on the date of the secretary of state's proclamation for~~
21 ~~the general election. No person who is a candidate for a party~~
22 ~~in a primary election may be certified as a candidate for a~~
23 ~~different party in the general election in the same election~~
24 ~~cycle.]~~

25 D. If a person nominated as a minor political

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1 party's candidate is affiliated with a different party on the
2 person's certificate of registration and is certified as a
3 candidate for that party, the minor political party shall
4 receive authorization from the person to be certified as the
5 minor political party's nominee and shall submit the
6 authorization to the secretary of state, in a form required by
7 the secretary of state, when certifying the party's nominees
8 pursuant to this section.

9 ~~[F-]~~ E. No voter shall sign a petition prescribed
10 by this section for more persons than the number of candidates
11 necessary to fill the office at the next ensuing general
12 election."

13 **SECTION 5.** Section 1-8-3.1 NMSA 1978 (being Laws 2014,
14 Chapter 40, Section 6 and Laws 2014, Chapter 81, Section 6) is
15 amended to read:

16 "1-8-3.1. NOMINATING PETITION FOR CANDIDATE OF AN
17 UNQUALIFIED STATE POLITICAL PARTY--QUALIFICATION AS AN
18 INDEPENDENT CANDIDATE.--The declaration of candidacy and
19 petition signatures submitted to the proper filing officer by a
20 candidate for nomination as a minor party candidate shall be
21 counted toward the requirements for qualification as an
22 independent candidate for the same office in the same election
23 if the candidate's party files for, but does not obtain status
24 as, a qualified political party in that election cycle. To
25 qualify as an independent candidate, the candidate must meet

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1 all requirements for an independent candidate in Section 1-8-45
2 NMSA 1978 and submit the required number of petition signatures
3 for an independent candidate as prescribed in Section 1-8-51
4 NMSA 1978. [~~No candidate may circulate petitions for candidacy
5 for more than one political party in an election cycle.~~]"

6 SECTION 6. Section 1-8-18 NMSA 1978 (being Laws 1969,
7 Chapter 240, Section 167, as amended) is amended to read:

8 "1-8-18. PRIMARY ELECTION LAW--WHO MAY BECOME A
9 CANDIDATE.--

10 A. No person shall become a candidate for
11 nomination by a political party or have the person's name
12 printed on the primary election ballot unless the person's
13 record of voter registration shows

14 [~~(1) affiliation with that political party on
15 the date of the secretary of state's general election
16 proclamation; and~~

17 ~~(2)] residence in the district of the office
18 for which the person is a candidate on the date of the
19 secretary of state's general election proclamation or in the
20 case of a person seeking the office of United States senator or
21 United States representative, residence within New Mexico on
22 the date of the secretary of state's general election
23 proclamation.~~

24 B. A voter may challenge the candidacy of a person
25 seeking nomination by a political party for the reason that the

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1 person does not meet the requirements of Subsection A of this
2 section by filing a petition in the district court within ten
3 days after the last day for filing a declaration of candidacy
4 or a statement of candidacy for convention designation. The
5 district court shall hear and render a decision on the matter
6 within ten days after the filing of the petition. The decision
7 of the district court may be appealed to the supreme court
8 within five days after the decision is rendered. The supreme
9 court shall hear and render a decision on the appeal
10 forthwith."

11 SECTION 7. Section 1-8-21.1 NMSA 1978 (being Laws 1993,
12 Chapter 55, Section 11, as amended) is amended to read:

13 "1-8-21.1. DESIGNATION OF CANDIDATES BY CONVENTION.--

14 A. State conventions of major political parties may
15 designate candidates for nomination to statewide office or the
16 office of United States representative.

17 B. No state convention for designating candidates
18 shall be held later than the second Sunday in March preceding
19 the primary election, and delegates to the convention shall be
20 elected according to state party rules filed in the office of
21 the secretary of state.

22 C. The state convention shall take only one ballot
23 upon candidates for each office to be filled. Every candidate
24 receiving twenty percent or more of the votes of the duly
25 elected delegates to the convention for the office to be voted

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1 upon at the ensuing primary election shall be certified to the
2 secretary of state as a convention-designated nominee for that
3 office by the political party. Certification shall take place
4 no later than 5:00 p.m. on the first Tuesday succeeding the
5 state convention.

6 D. The certificate of designation submitted to the
7 secretary of state shall state the name of the office for which
8 each person is a candidate, each candidate's name and address
9 and the name of the political party that each candidate
10 represents [~~and certification that the candidate has been a~~
11 ~~member of that political party for the period of time required~~
12 ~~by the Election Code]."~~

13 SECTION 8. Section 1-8-27 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 172, as amended) is amended to read:

15 "1-8-27. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
16 MANNER OF FILING.--Each declaration of candidacy, by nominating
17 petition or by preprimary convention designation, shall be
18 delivered for filing in person by the candidate therein named
19 or by a person acting, by virtue of written authorization,
20 solely on the candidate's behalf. [~~The proper filing officer~~
21 ~~shall not accept for filing more than one declaration of~~
22 ~~candidacy from any one individual, except that candidates who~~
23 ~~seek but fail to receive preprimary convention designation~~
24 ~~shall file a declaration of candidacy by nomination, according~~
25 ~~to provisions of the Primary Election Law, to have their names~~

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1 ~~placed on the primary election ballot.]"~~

2 SECTION 9. Section 1-8-29 NMSA 1978 (being Laws 1973,
3 Chapter 228, Section 3, as amended) is amended to read:

4 "1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
5 FORM.--In making a declaration of candidacy by nominating
6 petition or by pre-primary convention designation, the
7 candidate shall submit substantially the following form:

8 "DECLARATION OF CANDIDACY
9 BY PRE-PRIMARY CONVENTION DESIGNATION
10 (OR BY NOMINATING PETITION)

11 I, _____, (candidate's name on certificate
12 of registration) being first duly sworn, say that I reside at
13 _____, as shown by my certificate of registration
14 as a voter of Precinct No. _____ of the county of
15 _____, State of New Mexico;

16 I am a member of the _____ party as shown
17 by my certificate of registration [~~and I have not changed such~~
18 ~~party affiliation subsequent to the secretary of state's~~
19 ~~general election proclamation calling the primary in which I~~
20 ~~seek to be a candidate];~~

21 I desire to become [a] the _____ party candidate for
22 the office of _____ at the primary election to
23 be held on the date set by law for this year, and if the office
24 be that of a member of the legislature or that of a member of
25 the public education commission, that I actually reside at the

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1 address designated on my certificate of voter registration;

2 I will be eligible and legally qualified to hold this
3 office at the beginning of its term;

4 If a candidate for any office for which a nominating
5 petition is required, I am submitting with this statement a
6 nominating petition in the form and manner as prescribed by the
7 Primary Election Law; and

8 I make the foregoing affidavit under oath, knowing that
9 any false statement herein constitutes a felony punishable
10 under the criminal laws of New Mexico.

11 _____
12 (Declarant)

13 _____
14 (Mailing Address)

15 _____
16 (Residence Address)

17 Subscribed and sworn to before me this ____ day of
18 _____, 20 ____.

19 _____
20 (Notary Public)

21 My commission expires:
22 _____"."

23 SECTION 10. Section 1-8-33 NMSA 1978 (being Laws 1973,
24 Chapter 228, Section 7, as amended) is amended to read:

25 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--

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1 NUMBER OF SIGNATURES REQUIRED.--

2 A. As used in this section, "total vote" means the
3 sum of all votes cast for all of the party's candidates for
4 governor at the last preceding primary election at which the
5 party's candidate for governor was nominated.

6 B. Candidates who seek preprimary convention
7 designation shall file nominating petitions at the time of
8 filing declarations of candidacy. Nominating petitions for
9 those candidates shall be signed by a number of voters equal to
10 at least two percent of the total vote of the [~~candidate's~~]
11 party whose nomination the candidate is seeking in the state or
12 congressional district, or the following number of voters,
13 whichever is greater:

14 (1) for statewide offices, two hundred thirty
15 voters; and

16 (2) for congressional candidates, seventy-
17 seven voters.

18 C. Nominating petitions for candidates for any
19 other office to be voted on at the primary election for which
20 nominating petitions are required shall be signed by a number
21 of voters equal to at least three percent of the total vote of
22 the [~~candidate's~~] party whose nomination the candidate is
23 seeking in the district or division, or the following number of
24 voters, whichever is greater:

25 (1) for metropolitan court and magistrate

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1 courts, ten voters; [~~for the public regulation commission,~~
2 ~~fifty voters~~]

3 (2) for the public education commission,
4 twenty-five voters;

5 (3) for state representative, ten voters;

6 (4) for state senator, seventeen voters; and

7 (5) for district attorney and district judge,
8 fifteen voters.

9 D. A candidate who fails to receive the preprimary
10 convention designation that the candidate sought may collect
11 additional signatures to total at least four percent of the
12 total vote of the [~~candidate's~~] party whose nomination the
13 candidate is seeking in the state or congressional district,
14 whichever applies to the office [~~the candidate seeks~~] sought,
15 and file a new declaration of candidacy and nominating
16 [~~petitions~~] petition for the office for which the candidate
17 failed to receive a preprimary designation. The declaration of
18 candidacy and nominating [~~petitions~~] petition shall be filed
19 with the secretary of state either ten days following the date
20 of the preprimary convention at which the candidate failed to
21 receive the designation or on the date all declarations of
22 candidacy and nominating petitions are due pursuant to the
23 provisions of the Primary Election Law, whichever is later."

24 SECTION 11. Section 1-8-65 NMSA 1978 (being Laws 2014,
25 Chapter 40, Section 7 and Laws 2014, Chapter 81, Section 7) is

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1 amended to read:

2 "1-8-65. MINOR POLITICAL PARTY CANDIDATES FOR GENERAL OR
3 UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING
4 PETITION FORM.--

5 A. As used in Sections 1-8-2 through 1-8-4 NMSA
6 1978, "nominating petition" means the authorized form used for
7 obtaining the required number of signatures of voters that is
8 signed on behalf of the person wishing to become a minor
9 political party candidate for a political office in a general
10 or United States representative special election requiring a
11 nominating petition.

12 B. In making a declaration of candidacy, the
13 candidate shall file a nominating petition at the same time,
14 which shall be on forms prescribed by law.

15 C. The nominating petition for a minor political
16 party candidate for any office requiring a nominating petition
17 shall be on paper approximately eight and one-half inches wide
18 and eleven inches long with numbered lines for signatures
19 approximately three-eighths inch apart and shall be in the
20 following form:

21 "NOMINATING PETITION FOR MINOR POLITICAL PARTY CANDIDACY
22 (GENERAL ELECTION)

23 I, the undersigned, a registered voter of
24 New Mexico, hereby nominate _____, who resides at
25 _____ in the county of _____,

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1 New Mexico, for the _____ party nomination for the
2 office of _____ to be voted for at the
3 general election or United States representative special
4 election to be held on _____, and I declare that I am a
5 registered voter of the area to be represented by the office
6 for which the person being nominated is a candidate. I also
7 declare that I have not signed, and will not sign, any
8 nominating petition for more persons than the number of
9 candidates necessary to fill such office at the next ensuing
10 general election or at a United States representative special
11 election. I understand that if the [~~candidate's political~~]
12 party whose nomination the candidate is seeking does not
13 qualify as a minor political party, the candidate may run as an
14 unaffiliated independent candidate.

- 15 1. _____
16 (usual signature) (name printed (address as (city or zip
17 as registered) registered) code)
18 2. _____
19 (usual signature) (name printed (address as (city or zip
20 as registered) registered) code)".

21 D. In March of even-numbered years, the secretary
22 of state shall post on the secretary of state's [~~web site~~]
23 website and shall furnish to each county clerk a sample of a
24 nominating petition form, a copy of which shall be made
25 available by the county clerk upon request of any candidate.

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1 E. When more than one sheet is required for a
2 petition, each of the sheets shall be in the form prescribed by
3 this section."

4 **SECTION 12.** Section 1-10-7 NMSA 1978 (being Laws 1977,
5 Chapter 222, Section 30, as amended) is amended to read:

6 "1-10-7. BALLOTS--NAME SHALL APPEAR BUT ONCE--
7 EXCEPTIONS.--

8 A. In a primary or general election, no candidate's
9 name shall appear more than once on the ballot, except in the
10 case of a candidate who is also a candidate for president or
11 vice president of the United States or a candidate who has been
12 nominated for the same elective office by more than one
13 political party.

14 B. In a regular local election, a candidate's name:
15 (1) shall not appear more than once to be
16 elected to any position with the same local government; and
17 (2) may appear more than once to be elected to
18 any position with different local governments."

19 **SECTION 13.** A new section of Chapter 1, Article 12 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] CONDUCT OF ELECTION--COUNTING AND
22 TALLYING--CANDIDATES NOMINATED BY MORE THAN ONE POLITICAL
23 PARTY.--Votes cast for a candidate who was nominated for the
24 same elective office by more than one political party shall be
25 tallied separately by political party as in the normal course

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1 of tallying election results, and then the votes tallied for
2 the candidate shall be combined. The combined total of votes
3 shall be the final tally of the votes received by the candidate
4 and shall be certified as the result of the election for that
5 candidate."

6 SECTION 14. Section 1-12-37 NMSA 1978 (being Laws 1973,
7 Chapter 358, Section 2, as amended) is amended to read:

8 "1-12-37. CONDUCT OF ELECTION--VOTING MACHINES--
9 VERIFICATION OF RETURNS.--

10 A. Two election officials of different parties
11 shall verify that the counter settings registered on the
12 machine-printed returns are legible.

13 B. The machine-printed returns shall show:

14 (1) the number of votes cast for each
15 candidate; provided that in the case of a candidate who was
16 nominated for the same elective office by more than one
17 political party, the machine-printed returns shall show the
18 votes cast for the candidate by political party; and

19 (2) the number of votes cast for and against
20 any constitutional amendment or other question submitted.

21 [~~and~~]

22 C. The return shall be signed by each member of the
23 [~~precinct~~] election board and two watchers of opposing
24 interest, if there be such."

25 SECTION 15. REPEAL.--

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A. Section 1-8-19 NMSA 1978 (being Laws 1975,
Chapter 255, Section 106, as amended) is repealed.

B. Laws 2020, Chapter 9, Section 2 and Laws 2020,
Chapter 9, Section 5 are repealed.