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HOUSE BILL 702

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Kandy Cordova

AN ACT

RELATING TO ELECTIONS; ELIMINATING CERTAIN RESTRICTIONS ON
ABSENT UNIFORMED SERVICE VOTERS AND OVERSEAS VOTERS; ALLOWING
ELECTRONIC TRANSMISSION FOR VOTER REGISTRATION AND REQUESTS FOR
AND VOTING BY ABSENTEE BALLOTS BY FEDERAL QUALIFIED ELECTORS
AND OVERSEAS VOTERS.

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] WRITE-IN ABSENTEE BALLOTS- - FEDERAL
QUALIFIED ELECTORS AND OVERSEAS VOTERS. - -

A. A federal qualified elector or overseas voter
residing outside the United States may request a special write-
in federal or state absentee ballot, as appropriate, if:

- (1) the person submits with the request a

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1 statement that due to military or other contingencies that
2 preclude normal delivery of mail, the person cannot vote on an
3 absentee ballot during the normal absentee voting period; and

4 (2) the request is made between ninety and one
5 hundred eighty days before the election.

6 B. The county clerk shall determine the type of
7 write-in absentee ballot for which the voter is eligible and
8 send the ballot to the voter if the conditions of Paragraphs
9 (1) and (2) of Subsection A of this section are met. "

10 Section 2. Section 1-4-8 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 66, as amended) is amended to read:

12 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF
13 REGISTRATION--CLOSE OF REGISTRATION--FEDERAL QUALIFIED ELECTORS
14 AND OVERSEAS VOTERS--LATE REGISTRATION. --

15 A. For qualified electors other than federal
16 qualified electors or overseas voters, the following provisions
17 shall apply:

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

24 [~~B.~~] (2) registration shall be reopened on the
25 Monday following the election;

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

7 [~~D.~~] (4) during the period when registration
8 is closed, the county clerk shall receive certificates of
9 registration and other documents pertaining thereto but shall
10 not file the certificate of registration in the registration
11 book until the Monday following the election, at which time a
12 voter identification card shall be mailed to the registrant at
13 the address shown on the certificate of registration;

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

19 [~~F.~~] (6) the county clerk shall accept for
20 filing any certificate of registration that is hand delivered
21 before 5:00 p.m. on the Friday immediately following the close
22 of registration. The county clerk shall accept for filing any
23 mailed certificate of registration postmarked not less than
24 twenty-eight days prior to any election referred to in this
25 section. The county clerk shall accept for filing any

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1 certificate of registration accepted at a state agency
2 designated pursuant to Section 1-4-5.2 NMSA 1978 not later than
3 twenty-eight days prior to any election.

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

10 Section 3. Section 1-6-4.1 NMSA 1978 (being Laws 1987,
11 Chapter 327, Section 9, as amended) is amended to read:

12 "1-6-4.1. FEDERAL AND STATE WRITE-IN ABSENTEE BALLOT FOR
13 OVERSEAS VOTERS IN GENERAL ELECTIONS FOR STATE OR FEDERAL
14 OFFICES. --

15 A. Except as provided in Subsection C of this
16 section, a federal or state write-in absentee ballot for
17 federal or state offices in a general election shall be
18 processed in the same manner as provided by law for other
19 absentee ballots.

20 B. In completing the ballot, the overseas voter may
21 designate a candidate by writing in the name of the candidate
22 or by writing in the name of a political party, in which case
23 the ballot shall be counted for all candidates of that
24 political party for federal or state office. Any abbreviation,
25 misspelling or other minor variation in the form of the name of

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1 a candidate or a political party shall be disregarded in
2 determining the validity of the ballot if the intention of the
3 overseas voter can be ascertained.

4 C. A federal write-in absentee ballot of an
5 overseas voter shall not be counted if:

6 (1) the ballot is submitted from any location
7 in the United States;

8 (2) the application of the overseas voter for
9 an absentee ballot is received by the county clerk less than
10 thirty days before the election unless the application is
11 electronically transmitted to the clerk; or

12 (3) the absentee ballot of the overseas voter
13 is received by the county clerk later than 7:00 p. m. on
14 election day.

15 D. A federal qualified elector or overseas voter
16 may transmit, and the county clerk shall accept, an absentee
17 ballot by electronic transmission if:

18 (1) the voter signs an affidavit waiving the
19 right of secrecy of voter's ballot;

20 (2) the voter transmits the affidavit with the
21 absentee ballot; and

22 (3) the transmission of the absentee ballot
23 and affidavit are received by the county clerk no later than
24 7:00 p. m. on election day."

25 Section 4. Section 1-6-5 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 131, as amended by Laws 2001, Chapter 49,
2 Section 1 and by Laws 2001, Chapter 58, Section 1) is amended
3 to read:

4 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
5 MARKING AND DELIVERY OF BALLOT IN PERSON.--

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 has no valid certificate of
13 registration on file in the county and he is not a federal
14 qualified elector or if the applicant states he is a federal
15 qualified elector but his application indicates he is not a
16 federal qualified elector, no absentee ballot shall be issued
17 and the county clerk shall mark the application "rejected" and
18 file the application in a separate file from those accepted.

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

23 D. If the county clerk finds that the applicant is
24 a voter or a federal qualified elector, the county clerk shall
25 mark the application "accepted" and deliver an absentee ballot

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1 to the voter in the county clerk's office or mail to the
2 applicant an absentee ballot and the required envelopes for use
3 in returning the ballot. Acceptance of an application of a
4 federal qualified elector constitutes registration for the
5 election in which the ballot is to be cast. Acceptance of an
6 application from an overseas voter who is not an absent
7 uniformed services voter constitutes a request for changing
8 information on the certificate of registration of any such
9 voter. No absent voter shall be permitted to change his party
10 affiliation during those periods when change of party
11 affiliation is prohibited by the Election Code. Upon delivery
12 of an absentee ballot to a voter in the county clerk's office
13 or mailing of an absentee ballot to an applicant who is a
14 voter, an appropriate designation shall be made on the
15 signature line of the signature roster next to the name of the
16 voter who has been provided or mailed an absentee ballot.

17 E. If an application for an absentee ballot is
18 delivered in person to the county clerk and is accepted, the
19 county clerk shall provide the voter an absentee ballot and it
20 shall be marked by the applicant in a voting booth of a type
21 prescribed by the secretary of state, sealed in the proper
22 envelopes and otherwise properly executed and returned to the
23 county clerk or his authorized representative before the voter
24 leaves the office of the county clerk. The act of marking the
25 absentee ballot in the office of the county clerk shall be a

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1 convenience to the voter in the delivery of the absentee ballot
2 and does not make the office of the county clerk a polling
3 place subject to the requirements of a polling place in the
4 Election Code other than is provided in this subsection. It
5 shall be unlawful to solicit votes, display or otherwise make
6 accessible any posters, signs or other forms of campaign
7 literature whatsoever in the clerk's office. Absentee ballots
8 may be marked in person during the regular hours and days of
9 business at the county clerk's office from 8:00 a.m. on the
10 fortieth day preceding the election up until 5:00 p.m. on the
11 Saturday immediately prior to the date of the election. In
12 marking the absentee ballot, the voter may be assisted by one
13 person of the voter's choice.

14 F. Commencing with the twentieth day prior to an
15 election, an absent voter may vote in person, on an electronic
16 voting machine at the county clerk's office or at an alternate
17 location established by the county clerk; provided, a county
18 clerk may allow an absent voter to vote on an electronic voting
19 machine beginning on the fortieth day before an election. In
20 class A counties, the county clerk shall establish not less
21 than four alternate locations as a convenience to the voters.
22 Absentee voting may be done at the county clerk's office or an
23 alternate location during the regular hours of business from
24 8:00 a.m. on the twentieth day prior to the election until 5:00
25 p.m. on the Saturday immediately prior to the election. The

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1 county clerk shall ensure that procedures established for
2 processing an absent voter application and for voting by
3 absentee ballot are complied with at each [~~alternative~~]
4 alternate location.

5 G. Absentee ballots shall be [~~air-mailed~~] airmailed
6 or, if so requested, electronically transmitted to applicants
7 temporarily domiciled inside or outside the continental limits
8 of the United States not later than on the [~~Thursday~~] Friday
9 immediately prior to the date of the election.

10 H. No absentee ballot shall be delivered or mailed
11 by the county clerk to any person other than the applicant for
12 such ballot.

13 [~~I. The county clerk shall accept and process, with~~
14 ~~respect to a primary or general election for any federal~~
15 ~~office, any otherwise valid voter registration application from~~
16 ~~an absent uniformed services voter or overseas voter if the~~
17 ~~application is received not less than thirty days before the~~
18 ~~election. The county clerk shall also accept and process~~
19 ~~federal write-in absentee ballots from overseas voters in~~
20 ~~general elections for federal offices in accordance with the~~
21 ~~provisions of Section 103 of the federal Uniformed and Overseas~~
22 ~~Citizens Absentee Voting Act.~~

23 J.] I. The secretary of state and each county clerk
24 shall make reasonable efforts to publicize and inform voters of
25 the times and locations for absentee voting. "

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1 Section 5. Section 1-6-7 NMSA 1978 (being Laws 1969,
2 Chapter 240, Section 133, as amended) is amended to read:

3 "1-6-7. FORM OF ABSENTEE BALLOT. --As soon as candidates
4 and questions to be voted upon have been determined for each
5 election, the county clerk shall procure a supply of suitable
6 absentee ballots. The absentee ballots shall be numbered and
7 shall be, as nearly as possible, in the same form as prescribed
8 by the secretary of state for emergency ballots. However, to
9 reduce weight and bulk for transport of absentee ballots, the
10 size and weight of the paper for envelopes, ballots and
11 instructions shall be reduced as much as possible. Absentee
12 ballots shall be printed at least [~~forty~~] forty-five days prior
13 to the date of a primary election and forty-nine days prior to
14 the date of a general election. Absentee ballots for any other
15 election shall be printed at least thirty-five days prior to
16 the date of the election."

17 Section 6. Section 1-6-9 NMSA 1978 (being Laws 1969,
18 Chapter 240, Section 135, as amended) is amended to read:

19 "1-6-9. MANNER OF VOTING. --

20 A. [~~Any~~] A person voting pursuant to the Absent
21 Voter Act shall secretly mark his absentee ballot in the manner
22 provided in the Election Code for marking emergency paper
23 ballots, place it in the official inner envelope and securely
24 seal the envelope. The voter shall then place the official
25 inner envelope inside the official mailing envelope and

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1 securely seal the envelope. The voter shall then complete the
2 form on the reverse of the official mailing envelope, which
3 shall include an affirmation by the voter under penalty of
4 perjury that the facts stated in the form are true.

5 B. Federal qualified electors and overseas voters
6 shall either deliver or mail the official mailing envelope or
7 electronically transmit the absentee ballot to the county clerk
8 of their county of residence or deliver it to a person
9 designated by federal authority to receive executed ballots for
10 transmission to the county clerk of the county of residence or
11 former residence as the case may be. Voters shall either
12 deliver or mail the official mailing envelope to the county
13 clerk of their county of residence. "

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