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HOUSE BILL 346

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO ELECTIONS; PERMITTING SAME-DAY REGISTRATION AND  
VOTING AT PRIMARY AND GENERAL ELECTIONS.

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

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

"1-1-16. REGISTRATION OFFICER.--As used in the Election  
Code, "registration officer" means the secretary of state, a  
county clerk or a clerk's authorized deputy, a member of a  
precinct board on election day, a member of the board of  
registration or a state employee performing registration duties  
in accordance with the federal National Voter Registration Act  
of 1993 or Section 1-4-5.2 NMSA 1978."

Section 2. Section 1-4-5.1 NMSA 1978 (being Laws 1993,  
Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,  
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1 as amended) is amended to read:

2 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

3 A. A qualified elector may apply for registration:

4 (1) by mail;

5 (2) in the office of the secretary of state or  
6 county clerk ~~[or]~~;

7 (3) with a registration agent or officer; or

8 (4) on election day at a polling place in the  
9 county in which the qualified elector resides.

10 B. A person may request certificate of registration  
11 forms ~~[may be requested]~~ from the secretary of state or any  
12 county clerk in person, by telephone or by mail for ~~[oneself]~~  
13 that person or for ~~[others]~~ other persons. A qualified elector  
14 may request a certificate of registration form from a precinct  
15 board member on election day at a polling place in the county  
16 in which the qualified elector resides.

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

22 D. A qualified elector who has filed for an order  
23 of protection pursuant to the provisions of the Family Violence  
24 Protection Act and who presents a copy of that order from a  
25 state or tribal court to the registration officer shall not be

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1 required to provide address information on the certificate of  
2 registration.

3 E. Completed certificates of registration may be  
4 mailed or presented in person by the registrant or any other  
5 person to the secretary of state [~~or~~], presented in person by  
6 the registrant or any other person to the county clerk of the  
7 county in which the registrant resides or presented on election  
8 day in person by the registrant to a precinct board member at a  
9 polling place in the county in which the registrant resides.

10 F. If the registrant wishes to vote in the next  
11 election, the completed and signed certificate of registration  
12 shall be delivered or mailed and postmarked at least twenty-  
13 eight days before the election or presented on election day in  
14 person by the registrant to a precinct board member at a  
15 polling place in the county in which the registrant resides.

16 G. A certificate of registration presented by a  
17 registrant to a precinct board member on election day shall be  
18 returned to the county clerk with the election returns and  
19 materials destined for the county clerk.

20 [~~G.~~] H. Upon receipt of a certificate of  
21 registration, the secretary of state shall send the certificate  
22 to the county clerk in the county where the qualified elector  
23 resides.

24 [~~H.~~] I. Only when the certificate of registration  
25 is properly filled out, signed by the qualified elector and

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1 accepted for filing by the county clerk as evidenced by the  
2 county clerk's signature or stamp and the date of acceptance  
3 thereon and when notice has been received by the registrant  
4 shall it constitute an official public record of the  
5 registration of the qualified elector.

6 ~~[F.]~~ J. The secretary of state shall prescribe the  
7 form of the certificate of registration, which form shall be a  
8 postpaid mail-in format and shall be printed in Spanish and  
9 English. The certificate of registration form shall be clear  
10 and understandable to the average person and shall include  
11 brief but sufficient instructions to enable the qualified  
12 elector to complete the form without assistance. The form  
13 shall also include:

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

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

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

24 (4) a statement informing the applicant that:

25 (a) if the form is submitted by mail by

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1 the applicant and the applicant is registering for the first  
2 time in New Mexico, the applicant must submit with the form a  
3 copy of: 1) a current and valid photo identification [~~or voter~~  
4 ~~identification~~] card; or 2) a utility bill, bank statement,  
5 government check, paycheck, student identification card or  
6 other government document, including identification issued by  
7 an Indian nation, tribe or pueblo, that shows the name and  
8 address of the applicant; and

9 (b) if the applicant does not submit the  
10 required identification, [~~he~~] the applicant will be required to  
11 do so when voting in person or absentee; and

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

15 Section 3. Section 1-4-8 NMSA 1978 (being Laws 1969,  
16 Chapter 240, Section 66, as amended) is amended to read:

17 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF  
18 REGISTRATION--CLOSE OF REGISTRATION--ELECTION-DAY  
19 REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--  
20 LATE REGISTRATION.--

21 A. For qualified electors other than federal  
22 qualified electors or overseas voters, the following provisions  
23 shall apply:

24 (1) the county clerk shall receive  
25 certificates of registration at all times during normal working

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1 hours, except that the clerk shall close registration at  
2 5:00 p.m. on the twenty-eighth day immediately preceding any  
3 election at which the registration books are to be furnished to  
4 the precinct board;

5 (2) on election day, the county clerk shall  
6 accept and file certificates of registration for qualified  
7 electors who register to vote on election day at a polling  
8 place in the county in which the qualified elector resides;

9 [~~(2)~~] (3) registration shall be reopened on  
10 the Monday following the election;

11 [~~(3)~~] (4) for purposes of a municipal or  
12 school election, the registration period for those precincts  
13 within the municipality or school district is closed at 5:00  
14 p.m. on the twenty-eighth day immediately preceding the  
15 municipal or school election and is opened again on the Monday  
16 following the election;

17 [~~(4)~~] (5) during the period when registration  
18 is closed, the county clerk shall receive certificates of  
19 registration and other documents pertaining thereto but,  
20 except for certificates of registration received on election  
21 day, shall not file the certificate of registration in the  
22 registration book until the Monday following the election, at  
23 which time a voter identification card shall be mailed to the  
24 registrant at the address shown on the certificate of  
25 registration;

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1                    [~~(5)~~] (6) when the twenty-eighth day prior to  
2 any election referred to in this section is a Saturday, Sunday  
3 or legal holiday, registration shall be closed at 5:00 p.m. of  
4 the next succeeding regular business day for the office of the  
5 county clerk; and

6                    [~~(6)~~] (7) the county clerk shall accept for  
7 filing any certificate of registration that is subscribed and  
8 dated on or before the twenty-eighth day preceding the election  
9 and received by the county clerk before 5:00 p.m. on the Friday  
10 immediately following the close of registration. The county  
11 clerk shall accept for filing any mailed certificate of  
12 registration postmarked not less than twenty-eight days prior  
13 to any election referred to in this section and received by  
14 5:00 p.m. on the Friday immediately following the close of  
15 registration. The county clerk shall accept for filing any  
16 certificate of registration accepted at a state agency  
17 designated pursuant to Section 1-4-5.2 NMSA 1978 not later than  
18 twenty-eight days prior to any election.

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

25                    Section 4. Section 1-12-7.2 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 114, as amended) is amended to read:

2 "1-12-7.2. [~~VOTER~~] QUALIFIED ELECTOR WHOSE NAME IS NOT ON  
3 LIST OR ROSTER.--

4 A. A [~~voter~~] qualified elector whose name does not  
5 appear on the voter list and signature roster for the precinct  
6 in which [~~he~~] the qualified elector offers to vote may register  
7 and shall be permitted to vote in the precinct pursuant to the  
8 federal National Voter Registration Act of 1993 and Section  
9 1-12-8 NMSA 1978.

10 B. [~~The election clerks in charge of the signature~~  
11 ~~rosters shall add the voter's name and address in ink to the~~  
12 ~~signature roster on the line immediately following the last~~  
13 ~~entered voter's name and the voter shall be allowed to sign an~~  
14 ~~affidavit of eligibility and cast a provisional paper ballot,~~  
15 ~~provided he has first signed or marked both the signature~~  
16 ~~roster and checklist of registered voters.] If the qualified  
17 elector is not registered to vote and is at the polling place  
18 for the precinct in which the qualified elector resides, the  
19 qualified elector shall be allowed to complete a certificate of  
20 registration and cast a ballot; provided the qualified elector  
21 presents a current and valid photo identification card, utility  
22 bill, bank statement, government check, paycheck, student  
23 identification card or other government document, including  
24 identification issued by an Indian nation, tribe or pueblo,  
25 that shows the name and address of the applicant and signs or~~

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1 marks both the signature roster and checklist of registered  
2 voters. If the qualified elector is not registered to vote and  
3 is at a polling place for a precinct where the qualified  
4 elector does not reside, the qualified elector shall be allowed  
5 to sign an affidavit of eligibility and cast a provisional  
6 paper ballot; provided the polling place is within the county  
7 in which the qualified elector resides and the qualified  
8 elector presents a current and valid photo identification card,  
9 utility bill, bank statement, government check, paycheck,  
10 student identification card or other government document,  
11 including identification issued by an Indian nation, tribe or  
12 pueblo, that shows the name and address of the qualified  
13 elector and signs or marks both the signature roster and  
14 checklist of registered voters. Once the qualified elector is  
15 registered to vote, the election clerks in charge of the  
16 signature rosters shall add the voter's name and address in ink  
17 to the signature roster on the line immediately following the  
18 last entered voter's name.

19 C. The provisional paper ballot number for the  
20 [~~voter~~] person shall be entered on the affidavit of  
21 eligibility, the signature roster and the checklist of  
22 registered voters.

23 D. In a primary election, a voter shall not be  
24 permitted to vote for a candidate of a party different from the  
25 party designation shown on [~~his~~] the voter's certificate of

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1 registration. Upon making that determination, the county clerk  
2 shall transmit the ballot to the county canvassing board to be  
3 tallied and included in the canvass of that county for the  
4 appropriate precinct.

5 E. Verbal authorization from the county clerk to  
6 allow a person to vote is not permitted."

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

9 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

10 A. A person shall be permitted to vote on a  
11 provisional paper ballot even though the person's original  
12 certificate of registration cannot be found in the county  
13 register or even if the person's name does not appear on the  
14 signature roster, provided:

15 (1) the person's residence is within the  
16 boundaries of the county in which the person offers to vote;  
17 and

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

20 (3) the person executes a statement swearing  
21 or affirming to the best of the person's knowledge that the  
22 person is a qualified elector, is currently registered and  
23 eligible to vote in that county and has not cast a ballot or  
24 voted in that election; or

25 (4) the person is not registered and registers

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1 to vote in accordance with the provisions of Section 1-12-7.2  
2 NMSA 1978 on election day at a polling place for a precinct  
3 within which the person does not reside.

4 B. A voter shall vote on a provisional paper ballot  
5 if the voter:

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

8 (2) registered to vote by mail;

9 (3) did not submit the physical form of the  
10 required voter identification with the certificate of  
11 registration form; and

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

14 C. A voter shall vote on a provisional ballot in  
15 accordance with the provisions of Section 1-12-7.1 NMSA 1978 if  
16 the voter does not provide the required voter identification to  
17 the election judge.

18 D. An election judge shall have the voter sign the  
19 signature roster and issue the voter a provisional paper  
20 ballot, an outer envelope and an official inner envelope. The  
21 voter shall vote on the provisional paper ballot in secrecy and  
22 when done, place the ballot in the official inner envelope and  
23 place the official inner envelope in the outer envelope and  
24 return it to the precinct officer. The election judge shall  
25 ensure that the required information is completed on the outer

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1 envelope, have the voter sign it in the appropriate place and  
2 place it in an envelope designated for provisional paper  
3 ballots.

4 E. Knowingly executing a false statement  
5 constitutes perjury as provided in the Criminal Code of this  
6 state, and on voting on the basis of such falsely executed  
7 statement constitutes fraudulent voting."

8 Section 6. Section 1-12-8.1 NMSA 1978 (being Laws 2005,  
9 Chapter 270, Section 62) is amended to read:

10 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S ~~[COPY]~~  
11 RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a  
12 ~~[voter whose]~~ voter's name is not in the signature roster for  
13 the precinct in which the voter resides and the voter presents  
14 the voter's ~~[duplicate]~~ receipt of the voter's certificate of  
15 registration, the ~~[voter shall be allowed to vote on a~~  
16 ~~provisional ballot in the proper precinct in accordance with~~  
17 ~~the provisions of Section 1-5-10 NMSA 1978. The]~~ election  
18 judge shall inform the voter that the voter will be notified by  
19 the county clerk to provide a copy of the receipt of the  
20 certificate of registration to the county clerk if the original  
21 certificate is not located. The voter shall be allowed to  
22 register and cast a ballot as provided in the Election Code. A  
23 note shall be entered on the signature roster indicating that  
24 the voter's certificate of registration should be checked by  
25 the county clerk. For the purposes of investigation or

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1 prosecution, the county clerk shall provide the district  
2 attorney and the secretary of state with the person's name and  
3 address and the corresponding receipt number of the person's  
4 certificate of registration for each person whose certificate  
5 of registration is not located."

6 Section 7. Section 1-12-20 NMSA 1978 (being Laws 1969,  
7 Chapter 240, Section 273, as amended) is amended to read:

8 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A  
9 challenge may be interposed by a member of the precinct board  
10 or by a party challenger for the following reasons:

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

13 B. the person [~~presenting himself~~] who has come to  
14 vote is listed on the purge list placed with the signature  
15 rosters or is listed among those persons in the precinct from  
16 whom an absentee ballot was received;

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

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

23 E. in the case of an absentee ballot, the official  
24 outer envelope of the absentee voter has been opened prior to  
25 the counting of the ballots."

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1           Section 8. Section 1-12-25.4 NMSA 1978 (being Laws 2003,  
2 Chapter 356, Section 7, as amended) is amended to read:

3           "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

4           A. Upon closing of the polls, provisional paper  
5 ballots shall be delivered to the county clerk, who shall  
6 determine if the ballots will be counted prior to certification  
7 of the election.

8           B. A provisional paper ballot shall not be counted  
9 if the registered voter did not sign either the signature  
10 roster or the ballot's envelope.

11           ~~[C. If there is no record of the voter ever having~~  
12 ~~been registered in the county, the voter shall be offered the~~  
13 ~~opportunity to register and the provisional paper ballot shall~~  
14 ~~not be counted.~~

15           ~~D.]~~ C. If the voter was registered in the county,  
16 the registration was later canceled and the county clerk  
17 determines that the cancellation was in error, the voter's  
18 registration shall be immediately restored and the provisional  
19 paper ballot counted.

20           ~~[E.]~~ D. If the county clerk determines that the  
21 cancellation was not in error, the voter shall be offered the  
22 opportunity to register at the voter's correct address, and the  
23 provisional paper ballot shall not be counted.

24           ~~[F.]~~ E. If the voter is a registered voter in the  
25 county, but has voted on a provisional paper ballot at a

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1 polling place other than the voter's designated polling place,  
2 the county canvassing board shall ensure that only those votes  
3 for the positions or measures for which the voter was eligible  
4 to vote are counted.

5 ~~[G.]~~ F. If the county clerk finds that the voter  
6 who voted on a provisional paper ballot at the polls has also  
7 voted on an absentee ballot in that election, the provisional  
8 paper ballot shall not be counted.

9 ~~[H.]~~ G. The county canvassing board shall prepare a  
10 tally displaying the number of provisional paper ballots  
11 received, the number found valid and counted, the number  
12 rejected and not counted and the reason for not counting the  
13 ballots as part of the canvassing process and forward it to the  
14 secretary of state immediately upon certification of the  
15 election.

16 ~~[I.]~~ H. The secretary of state shall issue rules to  
17 ensure securing the secrecy of the provisional paper ballots,  
18 especially during canvassing, reviewing or recounting, and  
19 protecting against fraud in the voting process."