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HOUSE BILL 394

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

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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
6 or 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
11 registration forms [~~may be requested~~] from the secretary of
12 state or any county clerk in person, by telephone or by mail
13 for [~~oneself~~] that person or for [~~others~~] other persons. A
14 qualified elector may request a certificate of registration
15 form from a precinct board member on election day at a polling
16 place in the county 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
21 of 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
24 Violence Protection Act and who presents a copy of that order
25 from a state or tribal court to the registration officer shall

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1 not be required to provide address information on the
2 certificate of 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
8 election day in person by the registrant to a precinct board
9 member at a polling place in the county in which the
10 registrant resides.

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

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

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

25 [~~H.~~] I. Only when the certificate of registration

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

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

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

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

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

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1 (4) a statement informing the applicant that:

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

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

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

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

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

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

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1 (1) the county clerk shall receive
2 certificates of registration at all times during normal
3 working hours, except that the clerk shall close registration
4 at 5:00 p. m. on the twenty-eighth day immediately preceding
5 any election at which the registration books are to be
6 furnished to the precinct board;

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

11 [~~(2)~~] (3) registration shall be reopened on
12 the Monday following the election;

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

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

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1 registrant at the address shown on the certificate of
2 registration;

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

8 [~~(6)~~] (7) the county clerk shall accept for
9 filing any certificate of registration that is subscribed and
10 dated on or before the twenty-eighth day preceding the
11 election and received by the county clerk before 5:00 p. m. on
12 the Friday immediately following the close of registration.

13 The county clerk shall accept for filing any mailed
14 certificate of registration postmarked not less than twenty-
15 eight days prior to any election referred to in this section
16 and received by 5:00 p. m. on the Friday immediately following
17 the close of registration. The county clerk shall accept for
18 filing any certificate of registration accepted at a state
19 agency designated pursuant to Section 1-4-5.2 NMSA 1978 not
20 later than twenty-eight days prior to any election.

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

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1 immediately preceding the election. "

2 Section 4. Section 1-12-7.2 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 114, as amended) is amended to read:

4 "1-12-7.2. ~~[VOTER]~~ QUALIFIED ELECTOR WHOSE NAME IS NOT
5 ON LIST OR ROSTER. - -

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

11 B. ~~[The election clerks in charge of the signature~~
12 ~~rosters shall add the voter's name and address in ink to the~~
13 ~~signature roster on the line immediately following the last~~
14 ~~entered voter's name and]~~ If the qualified elector is not
15 registered to vote and is at the polling place for the
16 precinct within which the qualified elector resides, the
17 qualified elector shall be allowed to complete a certificate
18 of registration and cast a ballot; provided the qualified
19 elector has first signed or marked both the signature roster
20 and the checklist of registered voters. If the qualified
21 elector is not registered to vote and is at a polling place
22 for a precinct where the qualified elector does not reside,
23 the ~~[voter]~~ qualified elector shall be allowed to sign an
24 affidavit of eligibility and cast a provisional paper ballot;
25 provided ~~[he]~~ the polling place is within the county in which

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1 the qualified elector resides and the qualified elector has
2 first signed or marked both the signature roster and the
3 checklist of registered voters. Once the qualified elector is
4 registered to vote, the election clerks in charge of the
5 signature rosters shall add the voter's name and address in
6 ink to the signature roster on the line immediately following
7 the last entered voter's name.

8 C. The provisional paper ballot number for the
9 [voter] person shall be entered on the affidavit of
10 eligibility, the signature roster and the checklist of
11 registered voters.

12 D. In a primary election, a voter shall not be
13 permitted to vote for a candidate of a party different from
14 the party designation shown on [his] the voter's certificate
15 of registration. Upon making that determination, the county
16 clerk shall transmit the ballot to the county canvassing board
17 to be tallied and included in the canvass of that county for
18 the appropriate precinct.

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

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

23 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING. --

24 A. A person shall be permitted to vote on a
25 provisional paper ballot even though the person's original

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1 certificate of registration cannot be found in the county
2 register or even if the person's name does not appear on the
3 signature roster, provided:

4 (1) the person's residence is within the
5 boundaries of the county in which the person offers to vote;
6 and

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

9 (3) the person executes a statement swearing
10 or affirming to the best of the person's knowledge that the
11 person is a qualified elector, is currently registered and
12 eligible to vote in that county and has not cast a ballot or
13 voted in that election; or

14 (4) the person is not registered and
15 registers to vote on election day at a polling place for a
16 precinct within which the person does not reside, in
17 accordance with the provisions of Section 1-12-7.2 NMSA 1978.

18 B. A voter shall vote on a provisional paper
19 ballot if the voter:

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

22 (2) registered to vote by mail;

23 (3) did not submit the physical form of the
24 required voter identification with the certificate of
25 registration form; and

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

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

7 D. An election judge shall have the voter sign the
8 signature roster and issue the voter a provisional paper
9 ballot, an outer envelope and an official inner envelope. The
10 voter shall vote on the provisional paper ballot in secrecy
11 and when done, place the ballot in the official inner envelope
12 and place the official inner envelope in the outer envelope
13 and return it to the precinct officer. The election judge
14 shall ensure that the required information is completed on the
15 outer envelope, have the voter sign it in the appropriate
16 place and place it in an envelope designated for provisional
17 paper ballots.

18 E. Knowingly executing a false statement
19 constitutes perjury as provided in the Criminal Code of this
20 state, and voting on the basis of such falsely executed
21 statement constitutes fraudulent voting."

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

24 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S [COPY]
25 RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a

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1 ~~[voter whose]~~ voter's name is not in the signature roster for
2 the precinct in which the voter resides and the voter presents
3 the voter's ~~[duplicate]~~ receipt of the voter's certificate of
4 registration, the ~~[voter shall be allowed to vote on a~~
5 ~~provisional ballot in the proper precinct in accordance with~~
6 ~~the provisions of Section 1-5-10 NMSA 1978. The]~~ election
7 judge shall inform the voter that the voter will be notified
8 by the county clerk to provide a copy of the receipt of the
9 certificate of registration to the county clerk if the
10 original certificate is not located. The voter shall be
11 allowed to register and cast a ballot as provided in the
12 Election Code. A note shall be entered on the signature
13 roster indicating that the voter's certificate of registration
14 should be checked by the county clerk. For the purposes of
15 investigation or prosecution, the county clerk shall provide
16 the district attorney and the secretary of state with the
17 person's name and address and the corresponding receipt number
18 of the person's certificate of registration for each person
19 whose certificate of registration is not located."

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

22 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--

23 A challenge may be interposed by a member of the precinct
24 board or by a party challenger for the following reasons:

25 A. the person ~~[presenting himself]~~ who has come to

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1 vote is not registered and is not a qualified elector;

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

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

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

12 E. in the case of an absentee ballot, the official
13 outer envelope of the absentee voter has been opened prior to
14 the counting of the ballots. "

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

17 "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

18 A. Upon closing of the polls, provisional paper
19 ballots shall be delivered to the county clerk, who shall
20 determine if the ballots will be counted prior to
21 certification of the election.

22 B. A provisional paper ballot shall not be counted
23 if the registered voter did not sign either the signature
24 roster or the ballot's envelope.

25 [~~C. If there is no record of the voter ever having~~

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1 ~~been registered in the county, the voter shall be offered the~~
2 ~~opportunity to register and the provisional paper ballot shall~~
3 ~~not be counted.~~

4 ~~D.]~~ C. If the voter was registered in the county,
5 the registration was later canceled and the county clerk
6 determines that the cancellation was in error, the voter's
7 registration shall be immediately restored and the provisional
8 paper ballot counted.

9 ~~E.]~~ D. If the county clerk determines that the
10 cancellation was not in error, the voter shall be offered the
11 opportunity to register at the voter's correct address, and
12 the provisional paper ballot shall not be counted.

13 ~~F.]~~ E. If the voter is a registered voter in the
14 county, but has voted on a provisional paper ballot at a
15 polling place other than the voter's designated polling place,
16 the county canvassing board shall ensure that only those votes
17 for the positions or measures for which the voter was eligible
18 to vote are counted.

19 ~~G.]~~ F. If the county clerk finds that the voter
20 who voted on a provisional paper ballot at the polls has also
21 voted on an absentee ballot in that election, the provisional
22 paper ballot shall not be counted.

23 ~~H.]~~ G. The county canvassing board shall prepare
24 a tally displaying the number of provisional paper ballots
25 received, the number found valid and counted, the number

1 rejected and not counted and the reason for not counting the
2 ballots as part of the canvassing process and forward it to
3 the secretary of state immediately upon certification of the
4 election.

5 ~~[F.]~~ H. The secretary of state shall issue rules
6 to ensure securing the secrecy of the provisional paper
7 ballots, especially during canvassing, reviewing or
8 recounting, and protecting against fraud in the voting
9 process. "

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