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SENATE BILL 514

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Howie Morales

AN ACT

RELATING TO MUNICIPAL ELECTIONS; ELIMINATING CERTIFICATE
VOTING; PROVIDING REQUIREMENTS FOR PROVISIONAL BALLOTS;
REQUIRING NOTIFICATION OF STATUS OF A PROVISIONAL BALLOT TO AN
INDIVIDUAL WHO CASTS A PROVISIONAL BALLOT.

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

SECTION 1. Section 3-8-40 NMSA 1978 (being Laws 1985,
Chapter 208, Section 48, as amended) is amended to read:

"3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
VOTE--~~[CERTIFICATE VOTING]~~ PROVISIONAL BALLOTS--FRAUDULENT AND
DOUBLE VOTING.--

A. No person shall vote in a municipal special or
regular election unless that person is a qualified elector and
[~~he~~] has appeared to vote at the polling place in the precinct
or consolidated precinct that encompasses [~~his~~] the qualified

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1 elector's place of residence as shown on the signature roster
2 or at some other polling place at which the person is
3 authorized to vote.

4 B. Notwithstanding the provisions of Subsection A
5 of this section, a person shall be permitted to vote on a
6 provisional paper ballot even though that person's name cannot
7 be found in the signature roster, provided:

8 (1) [~~his~~] the person's residence is within the
9 boundaries of the municipality [~~and within the boundaries of~~
10 ~~the precinct and the district, if applicable, in which he~~
11 ~~offers to vote;~~

12 ~~(2) his name is not listed as having been~~
13 ~~issued an absentee ballot;~~

14 ~~(3) he presents a certificate bearing the seal~~
15 ~~and signature of the county clerk stating that his affidavit of~~
16 ~~registration is on file at the county clerk's office, that he~~
17 ~~has not been purged from the voter rolls and that he shall be~~
18 ~~permitted to vote in the precinct and election specified~~
19 ~~therein; provided that such authorization shall not be given~~
20 ~~orally by the county clerk]; and~~

21 [~~(4) he~~] (2) the person executes a statement
22 swearing or affirming to the best of [~~his~~] the person's
23 knowledge that [~~he~~] the person is a qualified elector resident
24 of the municipality, currently registered and eligible to vote
25 [~~in that precinct~~] and has not cast a ballot or voted in the

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1 election.

2 C. Upon compliance with the requirements of
3 Subsection B of this section, the election judge shall cause
4 the election clerks to:

5 (1) write the person's name and address [~~as~~
6 ~~shown on the certificate~~] in the signature roster under the
7 heading for name and address in the first blank space
8 immediately below the last name and address appearing in the
9 signature roster;

10 [~~(2)~~] ~~insert the person's ballot number or~~
11 ~~voter number as shown on the public counter of the voting~~
12 ~~machine on the certificate and on his executed sworn statement;~~

13 [~~(3)~~] (2) retain the [~~completed certificate and~~
14 ~~the~~] executed sworn statement, which shall be returned to the
15 municipal clerk with the election returns; and

16 [~~(4)~~] (3) comply with all relevant
17 requirements of Section 3-8-41 NMSA 1978.

18 D. After canvass, the municipal clerk shall in
19 writing notify the county clerk [~~of the names of~~] and all
20 individuals [~~voting on certificates~~] who cast provisional
21 ballots as to the disposition of the provisional paper ballots.

22 E. A person who knowingly executes a false
23 statement required by Paragraph [~~(4)~~] (2) of Subsection B of
24 this section is guilty of perjury as provided in the Criminal
25 Code, and voting on the basis of such falsely executed

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1 statement constitutes fraudulent voting.

2 F. A person not entitled to vote who fraudulently
3 votes or a person who votes or offers to vote more than once at
4 any election is guilty of a fourth degree felony."

5 SECTION 2. Section 3-8-43 NMSA 1978 (being Laws 1985,
6 Chapter 208, Section 51, as amended) is amended to read:

7 "3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED
8 CHALLENGES--ENTRIES--DISPOSITION.--

9 A. A challenge may be interposed by a member of the
10 precinct board or by a challenger for the following reasons,
11 which shall be stated in an audible tone by the person making
12 the challenge:

13 (1) the person offering to vote is not
14 registered;

15 (2) the person offering to vote is listed
16 among those persons in the precinct to whom an absentee ballot
17 was issued;

18 (3) the person offering to vote is not a
19 qualified elector;

20 (4) the person offering to vote is not listed
21 on the signature roster or voter registration list;

22 (5) in the case of an absentee ballot, the
23 official mailing envelope containing an absentee ballot has
24 been opened prior to delivery of absentee ballots to the absent
25 voter precinct board; or

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1 (6) the person offering to vote is a qualified
2 elector of the municipality but does not reside in the district
3 where the person is offering to vote.

4 B. When a person has offered to vote and a
5 challenge is interposed and the person's name appears in the
6 signature roster or the person's name has been entered in the
7 signature roster pursuant to Subsection C of Section 3-8-40
8 NMSA 1978, the election clerk shall write the word "challenged"
9 above the person's signature in the signature roster and:

10 (1) if the challenge is unanimously affirmed
11 by the election judges:

12 (a) the election clerk shall write the
13 word "affirmed" above the person's signature next to the
14 challenge notation in the signature roster;

15 (b) the person shall ~~[nevertheless]~~ be
16 furnished a provisional paper ballot, ~~[whether or not voting~~
17 ~~machines are being used at the polling place, and]~~ an outer
18 envelope and an official inner envelope. The voter shall vote
19 on the provisional paper ballot in secrecy, place the completed
20 ballot in the official inner envelope, place the official inner
21 envelope in the outer envelope and return the outer envelope
22 with its contents to an election judge;

23 (c) the election judge shall ensure that
24 the required information is completed on the outer envelope,
25 require the voter to sign the outer envelope in the appropriate

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1 space and place the outer envelope with its contents in an
2 envelope designated for provisional paper ballots; and

3 (d) the election clerk shall write the
4 provisional ballot tracking number [of the ballot so furnished]
5 next to the person's signature in the signature roster;

6 ~~[(c) the person shall be allowed to mark~~
7 ~~and prepare the ballot. The person shall return the paper~~
8 ~~ballot to an election judge who shall announce the person's~~
9 ~~name in an audible tone and in the person's presence place the~~
10 ~~challenged ballot in an envelope marked "rejected", which shall~~
11 ~~be sealed and the person's name shall be written on the~~
12 ~~envelope; and~~

13 ~~(d) the envelope containing the rejected~~
14 ~~ballot shall then be deposited in the ballot box and shall not~~
15 ~~be counted] or~~

16 (2) if the challenge is not unanimously
17 affirmed by the election judges:

18 (a) the election clerks shall write the
19 words "not affirmed" above the person's signature next to the
20 challenge notation in the signature roster; and

21 (b) the person shall be allowed to vote
22 in the manner allowed by law as if the challenge had not been
23 interposed.

24 C. A required challenge shall be interposed by the
25 precinct board when a person attempts to offer to vote and

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1 demands to vote and the person's name does not appear on the
2 signature roster and cannot be entered pursuant to Subsection B
3 of Section 3-8-40 NMSA 1978. A required challenge shall be
4 interposed by the precinct board as follows:

5 (1) the election judge shall cause the
6 election clerks to enter the person's name and address under
7 the heading "name and address" in the signature roster in the
8 first blank space immediately below the last name and address
9 that appears in the signature roster;

10 (2) the election clerk shall immediately write
11 the words "required challenge" above the space provided for the
12 person's signature in the signature roster;

13 (3) the person shall sign the person's name in
14 the signature roster;

15 (4) the person shall ~~[nevertheless]~~ be
16 furnished a provisional paper ballot, ~~[whether or not voting~~
17 ~~machines are being used at the polling place, and]~~ an outer
18 envelope and an official inner envelope. The voter shall vote
19 on the provisional paper ballot in secrecy, place the completed
20 ballot in the official inner envelope, place the official inner
21 envelope in the outer envelope and return the outer envelope
22 with its contents to an election judge;

23 (5) the election judge shall ensure that the
24 required information is completed on the outer envelope,
25 require the voter to sign the outer envelope in the appropriate

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1 space and place the outer envelope with its contents in an
2 envelope designated for provisional paper ballots; and

3 (6) the election clerk shall write the
4 provisional ballot tracking number [of the ballot so furnished]
5 next to the person's signature in the signature roster [and

6 ~~(5) the person shall be allowed to mark and~~
7 ~~prepare the ballot. The person shall return the paper ballot~~
8 ~~to an election judge who shall announce the person's name in an~~
9 ~~audible tone and in the person's presence place the required~~
10 ~~challenge ballot in an envelope marked "rejected--required~~
11 ~~challenge" that shall be sealed. The person's name shall be~~
12 ~~written on the envelope and the envelope containing the~~
13 ~~rejected ballot shall then be deposited in the ballot box and~~
14 ~~shall not be counted]."~~

15 SECTION 3. A new section of the Municipal Election Code
16 is enacted to read:

17 "[NEW MATERIAL] CONDUCT OF ELECTION--PROVISIONAL VOTING--
18 INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

19 A. If a voter is required to vote on a provisional
20 paper ballot, the election clerk shall give the voter written
21 instructions on how the voter may determine whether the vote
22 was counted and, if the vote was not counted, the reason it was
23 not counted.

24 B. The municipal clerk shall provide a free access
25 system, such as a local telephone number or internet web site,

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1 that a voter who casts a provisional paper ballot may access to
2 ascertain whether the voter's ballot was counted and, if the
3 vote was not counted, the reason it was not counted and how to
4 appeal the decision pursuant to rules issued by the secretary
5 of state. Access to information regarding an individual
6 voter's provisional paper ballot is restricted to the voter who
7 cast the ballot.

8 C. Beginning with the closing of the polls on
9 election day through the fifth day following the election, the
10 municipal clerk shall notify by mail each person whose
11 provisional paper ballot was not counted of the reason the
12 ballot was not counted. The voter shall have until the tenth
13 day after the election to appeal to the municipal clerk a
14 decision to reject the voter's ballot."

15 SECTION 4. A new section of the Municipal Election Code
16 is enacted to read:

17 "[NEW MATERIAL] CONDUCT OF ELECTION--PROVISIONAL PAPER
18 BALLOTS--DISPOSITION.--

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

23 B. A provisional paper ballot shall not be counted
24 if:

25 (1) the registered voter did not sign the

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1 signature roster or the outer envelope containing the
2 provisional ballot;

3 (2) the county clerk advises the municipal
4 clerk in writing that there is no record of the voter ever
5 having been registered in the municipality; however, the voter
6 shall be offered the opportunity to register to vote in future
7 elections;

8 (3) the county clerk determines that the
9 voter's registration in the municipality was canceled and so
10 advises the municipal clerk in writing; however, the voter
11 shall be offered the opportunity to register at the voter's
12 correct address; and

13 (4) the municipal clerk finds that a voter who
14 voted on a provisional paper ballot at the polls also voted an
15 absentee ballot or voted early in that election.

16 C. If the voter is a registered voter in the
17 municipality but has voted on a provisional paper ballot at a
18 polling place other than the voter's designated or authorized
19 polling place, the municipal clerk shall ensure that only those
20 votes for positions or measures for which the voter was
21 eligible to vote are counted.

22 D. If the voter was registered in the municipality,
23 the registration was later canceled and the county clerk
24 determines that the cancellation was in error and so advises
25 the municipal clerk in writing, the voter's registration shall

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1 be immediately restored and the provisional paper ballot
2 counted.

3 E. As part of the canvassing process, the municipal
4 clerk shall prepare a tally of all election results and forward
5 the tally to the county clerk immediately upon certification of
6 the election. The tally shall include:

7 (1) the number of provisional paper ballots
8 received;

9 (2) the number of provisional paper ballots
10 determined to be valid and counted; and

11 (3) the number of provisional paper ballots
12 rejected and not counted and the reason for each rejection."