

HOUSE BILL 93

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PRIMARY ELECTIONS; ALLOWING VOTERS WHO HAVE NOT DESIGNATED A MAJOR POLITICAL PARTY AFFILIATION ON THEIR CERTIFICATES OF REGISTRATION TO PARTICIPATE IN THE PRIMARY ELECTION PROCESS BY CHOOSING TO AFFILIATE WITH A MAJOR PARTY BY REQUESTING A BALLOT.

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

SECTION 1. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

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A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the change of party affiliation.

B. A voter who has previously declined to designate a party affiliation on the voter's certificate of registration but who desires to designate a party affiliation [~~shall~~] on the voter's certificate of registration may execute a new certificate of registration indicating the desired party affiliation.

C. A voter who does not designate on the certificate of registration a party affiliation shall be considered to have declined to designate a party affiliation.

D. A voter who has declined to designate on the certificate of registration a party affiliation, or who designated affiliation with HSEIC→an unqualified a minor←HSEIC political party, but who chooses to affiliate with a party that is participating in a primary election may do so by requesting the ballot of one of the parties participating in that primary election. The voter's certificate of registration shall not be changed to reflect the voter's party affiliation unless the voter so requests in accordance with the provisions of Subsection B of this section."

SECTION 2. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

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A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter and if the voter is a uniformed-service voter or an overseas voter. If the applicant is a uniformed-service voter or overseas voter, the application shall be processed pursuant to the Uniform Military and Overseas Voters Act.

B. If the applicant does not have a valid certificate of registration on file in the county, an absentee ballot shall not be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

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

D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee

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ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the applicant has on file with the county a valid certificate of registration, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code; provided that a voter who has declined to designate a party affiliation on the voter's certificate of registration, or designated affiliation with HSEIC→an unqualified a minor←HSEIC political party, may choose to affiliate with a party in a primary election by requesting the ballot of one of the parties participating in that election. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of

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business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code. If the county clerk establishes an additional alternate voting location near the clerk's office, absentee ballots may be marked in person at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election. The additional alternate voting location shall be operated by the county clerk and the county clerk's staff.

G. When marking an absentee ballot in person at the county clerk's office, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required voter identification, the voter, after subscribing an application for an absentee ballot, shall be allowed to vote by

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inserting the ballot into an optical scan tabulator certified for in-person absentee voting at the county clerk's office. The county clerk or the clerk's authorized representative shall make an appropriate designation indicating that the voter has voted absentee. In marking the absentee ballot, the voter may be assisted pursuant to the provisions of Section 1-12-15 NMSA 1978.

H. Absentee ballots shall be sent to applicants not later than on the Friday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided, however, that notice is provided at least ten days before early voting begins.

K. The secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots.

L. It is unlawful to electioneer in the county clerk's office or in any alternate voting location."

SECTION 3. Section 1-6-22.1 NMSA 1978 (being Laws 2009, Chapter 251, Section 1 and Laws 2009, Chapter 274, Section 1, .211783.1

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as amended) is amended to read:

"1-6-22.1. MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING
IN LIEU OF POLLING PLACE.--

A. Notwithstanding the provisions of Sections
1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in
November of each odd-numbered year, a board of county
commissioners may designate a precinct as a mail ballot
election precinct if, upon a written request of the county
clerk, it finds that the precinct has fewer than one hundred
voters and the nearest polling place for an adjoining precinct
is more than twenty miles driving distance from the boundary
for the precinct in question.

B. If a precinct is designated a mail ballot
election precinct, in addition to the notice required pursuant
to Section 1-3-8 NMSA 1978, the county clerk shall notify by
mail with delivery confirmation all voters in that precinct at
least forty-two days before an election that each voter will be
sent an absentee ballot twenty-eight days before the election
and that there will be no polling place for the precinct on
election day. The county clerk shall include in the notice a
card informing the voter that if the voter does not want to
receive an absentee ballot for that election, the voter should
return the card before the date the county clerk is scheduled
to mail out absentee ballots. The notice shall also inform the
voter that a voting system equipped for persons with

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disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail. In addition, the notice shall inform the voter if the county is consolidating precincts on election day and, if so, the ability of the voter to cast a ballot at any consolidated precinct on election day if the voter chooses not to receive an absentee ballot, or to cast a provisional ballot at any consolidated precinct if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot.

C. For a primary election, the card sent to voters who have not designated a party affiliation on their certificates of registration, or who have designated an affiliation with HSEIC→an unqualified a minor←HSEIC political party, shall require that such voters return the card and indicate which major party's ballot they choose for that election.

D. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise or does not return the card required by Subsection C of this section indicating which party ballot the voter chooses for that election, along with a notice that there will be no polling place in that precinct on election day.

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[D-] E. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that a voter from that precinct may vote on a replacement or provisional paper ballot pursuant to Section 1-6-16 NMSA 1978 or on an emergency paper ballot pursuant to Section 1-6-16.2 NMSA 1978."

SECTION 4. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE--PERSONS PERMITTED TO VOTE UPON CHOOSING A PARTY.--

A. A person shall not vote in a primary, general or statewide special election unless [he] the person is a voter of the county in which [he] the person offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

~~[B. A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.~~

G-] B. A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on [his] the person's current certificate of registration; provided that a person who has declined to designate a political party affiliation on the person's certificate of registration, or has designated affiliation with HSEIC ~~an unqualified a minor~~ HSEIC political party, may choose

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to affiliate with a party by requesting a ballot in a primary election and vote for the candidates on that party's primary election ballot."

SECTION 5. Section 1-12-7.1 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is amended to read:

"1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF VOTERS--USE DURING ELECTION.--

A. At each election day polling location, other than a consolidated precinct where any voter in the county may vote, the precinct board shall post securely at or near the entrance of the polling place one copy of an alphabetical list of voters and a map of the precincts represented in that polling place for use of the voters prior to voting. The posted copy shall not contain a listing of voter addresses, years, months or days of birth or social security numbers.

B. At each polling location where physical rosters are used, the presiding judge of the precinct board shall assign one judge or election clerk of the board to be in charge of one copy of the checklist of voters, which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one judge or election clerk to be in charge of the signature roster.

D. The judge or election clerk assigned to confirm

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registration shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is either currently registered in a party designated on the primary election ballot or has declined to designate a party affiliation on the voter's certificate of registration, or has designated affiliation with HSEIC→an unqualified a minor←HSEIC political party, and chooses to affiliate with a party for that primary election by requesting a ballot of a party designated on the primary election ballot. If the person's registration is confirmed and the voter provides the required voter identification, the judge or election clerk shall announce to the judges or election clerks the list number and the name of the voter as shown on the checklist of voters. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk's office before 5:00 p.m. on the second day following the election, or to the precinct board before the polls close, or the voter's provisional ballot shall not be qualified. If the required voter identification is provided, the voter's provisional paper ballot shall be qualified and the voter shall not vote on any other type of ballot.

E. The judge or election clerk shall locate the name on the signature roster and shall require the voter to

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sign the voter's usual signature or, if unable to write, to make the voter's mark opposite the voter's printed name. If the voter makes the voter's mark, it shall be witnessed by one of the judges or election clerks of the precinct board.

F. If the signature roster indicates that the voter is required to present a physical form of identification before voting, the judge or election clerk shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional paper ballot, that ballot shall be qualified.

G. The judge or election clerk shall follow the procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA 1978 if a person whose name does not appear on the signature roster requests to vote or a person is required to vote on a provisional paper ballot.

H. A voter shall not be permitted to vote until the voter has properly signed the voter's usual signature or made the voter's mark in the signature roster."

SECTION 6. Section 1-12-7.2 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is amended to read:

"1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

A. A voter whose name does not appear on the voter

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list and signature roster for the precinct in which the voter offers to vote shall be permitted to vote in the precinct pursuant to the federal National Voter Registration Act of 1993 and Section 1-12-8 NMSA 1978.

B. The judges or election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name, and the voter shall be allowed to sign an affidavit of eligibility and cast a provisional paper ballot; provided that the voter has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot tracking number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on the voter's certificate of registration unless the voter's certificate of registration shows the voter has declined to designate a party affiliation, or has designated affiliation with HSEIC→an unqualified a minor←HSEIC party, and the voter chooses to affiliate with a party for that primary election by requesting the ballot of a party participating in the primary. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the

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canvass of that county for the appropriate precinct."

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

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

A. the person offering to vote is not registered to vote;

B. the person offering to vote is listed among those persons to whom an absentee ballot was mailed;

C. the person offering to vote has already cast a ballot in that election;

D. the person offering to vote is improperly registered because the person is not a qualified elector; or

E. in the case of a primary election, the person desiring to vote is ~~[not]~~ already affiliated with a qualified political party represented on the ballot but requests a ballot for a party other than the qualified party with which the voter is affiliated."

SECTION 8. Section 1-15A-2 NMSA 1978 (being Laws 1977, Chapter 230, Section 2, as amended) is amended to read:

"1-15A-2. VOTING IN PRESIDENTIAL PRIMARY--DATE OF ELECTION.--

A. In the year in which the president and vice president of the United States are to be elected, the

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registered voters of this state shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party in either a presidential primary election or in accordance with the selection procedure for presidential candidates of each voter's party. The presidential primary election shall be held on the same date as the primary election is held in this state.

B. A voter may vote in a presidential primary election on the ballot of only one of the parties participating in the primary election in accordance with the provisions of Section 1-12-7.1 NMSA 1978."

SECTION 9. Section 1-15A-8 NMSA 1978 (being Laws 1977, Chapter 230, Section 7, as amended) is amended to read:

"1-15A-8. VOTING IN PRESIDENTIAL PRIMARY--BALLOT POSITION.--

A. All candidates in the presidential primary election shall appear with the candidates for other offices of their respective parties at an appropriate place on the ballot. Candidates who are nominated by committee and by petition shall be placed first as a group on the presidential primary ballot [~~with each candidate's respective position in that group determined by the provisions of the Ballot Positioning Act~~]. The ballot position for the uncommitted category shall be placed last on the presidential primary ballot.

B. The voter shall be able to [~~cast his ballot~~]

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vote for one of the presidential candidates on the ballot of ~~[his]~~ the party with which the voter is affiliated or, if the voter has declined to designate a party affiliation on the voter's certificate of registration, or has designated affiliation with HSEIC→an unqualified a minor←HSEIC political party, with the party that the voter chooses to affiliate with in that election in accordance with the provisions of Section 1-12-7.1 NMSA 1978, or for an uncommitted delegation. A vote of the latter kind shall express the preference for an uncommitted delegation from New Mexico to the national convention of [that voter's] the party with which that voter is affiliated."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.