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HOUSE BILL 93

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

INTRODUCED BY

Daymon Ely and Natalie Figueroa and Joy Garratt and
Melanie Ann Stansbury and Dayan Hochman-Vigil

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.--

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

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1 but who desires to designate a party affiliation [~~shall~~] on the
2 voter's certificate of registration may execute a new
3 certificate of registration indicating the desired party
4 affiliation.

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

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

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

20 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

21 A. The county clerk shall mark each completed
22 absentee ballot application with the date and time of receipt
23 in the clerk's office and enter the required information in the
24 absentee ballot register. The county clerk shall then
25 determine if the applicant is a voter and if the voter is a

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1 uniformed-service voter or an overseas voter. If the applicant
2 is a uniformed-service voter or overseas voter, the application
3 shall be processed pursuant to the Uniform Military and
4 Overseas Voters Act.

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

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

14 D. If the applicant has on file with the county a
15 valid certificate of registration that indicates that the
16 applicant is a voter who is a new registrant and who registered
17 by mail without submitting the required voter identification,
18 the county clerk shall notify the voter that the voter must
19 submit with the absentee ballot the required physical form of
20 identification. The county clerk shall note on the absentee
21 ballot register and signature roster that the applicant's
22 absentee ballot must be returned with the required
23 identification.

24 E. If the applicant has on file with the county a
25 valid certificate of registration, the county clerk shall mark

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1 the application "accepted" and, beginning twenty-eight days
2 before the election, deliver an absentee ballot to the voter in
3 the county clerk's office or mail to the applicant an absentee
4 ballot and the required envelopes for use in returning the
5 ballot. An absent voter shall not be permitted to change party
6 affiliation during those periods when change of party
7 affiliation is prohibited by the Election Code; provided that a
8 voter who has declined to designate a party affiliation on the
9 voter's certificate of registration, or designated affiliation
10 with an unqualified political party, may choose to affiliate
11 with a party in a primary election by requesting the ballot of
12 one of the parties participating in that election. Upon
13 delivery of an absentee ballot to a voter in the county clerk's
14 office or mailing of an absentee ballot to an applicant who is
15 a voter, an appropriate designation shall be made on the
16 signature line of the signature roster next to the name of the
17 voter who has been provided or mailed an absentee ballot.

18 F. Absentee ballots may be marked in person at the
19 county clerk's office during the regular hours and days of
20 business beginning on the twenty-eighth day preceding the
21 election and from 10:00 a.m. to 6:00 p.m. on the Saturday
22 immediately prior to the date of the election. The act of
23 marking the absentee ballot in the office of the county clerk
24 shall be a convenience to the voter in the delivery of the
25 absentee ballot and does not make the office of the county

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1 clerk a polling place subject to the requirements of a polling
2 place in the Election Code. If the county clerk establishes an
3 additional alternate voting location near the clerk's office,
4 absentee ballots may be marked in person at that location
5 during the regular hours and days of business beginning on the
6 twenty-eighth day preceding the election and during the hours
7 for voting at alternate voting locations commencing on the
8 third Saturday prior to the election through the Saturday
9 immediately prior to the election. The additional alternate
10 voting location shall be operated by the county clerk and the
11 county clerk's staff.

12 G. When marking an absentee ballot in person at the
13 county clerk's office, the voter shall provide the required
14 voter identification to the county clerk or the clerk's
15 authorized representative. If the voter does not provide the
16 required voter identification, the voter shall be allowed to
17 vote on a provisional ballot. If the voter provides the
18 required voter identification, the voter, after subscribing an
19 application for an absentee ballot, shall be allowed to vote by
20 inserting the ballot into an optical scan tabulator certified
21 for in-person absentee voting at the county clerk's office.

22 The county clerk or the clerk's authorized representative shall
23 make an appropriate designation indicating that the voter has
24 voted absentee. In marking the absentee ballot, the voter may
25 be assisted pursuant to the provisions of Section 1-12-15 NMSA

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1 1978.

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

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

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

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

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

18 SECTION 3. Section 1-6-22.1 NMSA 1978 (being Laws 2009,
19 Chapter 251, Section 1 and Laws 2009, Chapter 274, Section 1,
20 as amended) is amended to read:

21 "1-6-22.1. MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING
22 IN LIEU OF POLLING PLACE.--

23 A. Notwithstanding the provisions of Sections
24 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in
25 November of each odd-numbered year, a board of county

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1 commissioners may designate a precinct as a mail ballot
2 election precinct if, upon a written request of the county
3 clerk, it finds that the precinct has fewer than one hundred
4 voters and the nearest polling place for an adjoining precinct
5 is more than twenty miles driving distance from the boundary
6 for the precinct in question.

7 B. If a precinct is designated a mail ballot
8 election precinct, in addition to the notice required pursuant
9 to Section 1-3-8 NMSA 1978, the county clerk shall notify by
10 mail with delivery confirmation all voters in that precinct at
11 least forty-two days before an election that each voter will be
12 sent an absentee ballot twenty-eight days before the election
13 and that there will be no polling place for the precinct on
14 election day. The county clerk shall include in the notice a
15 card informing the voter that if the voter does not want to
16 receive an absentee ballot for that election, the voter should
17 return the card before the date the county clerk is scheduled
18 to mail out absentee ballots. The notice shall also inform the
19 voter that a voting system equipped for persons with
20 disabilities will be available at all early voting sites before
21 election day and in the office of the county clerk on election
22 day in case the voter prefers to vote in person and not by
23 mail. In addition, the notice shall inform the voter if the
24 county is consolidating precincts on election day and, if so,
25 the ability of the voter to cast a ballot at any consolidated

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1 precinct on election day if the voter chooses not to receive an
2 absentee ballot, or to cast a provisional ballot at any
3 consolidated precinct if the voter does not receive an absentee
4 ballot, which will be counted upon confirmation that the voter
5 has not returned the absentee ballot.

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

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

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

25 SECTION 4. Section 1-12-7 NMSA 1978 (being Laws 1969,

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1 Chapter 240, Section 246, as amended) is amended to read:

2 "1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
3 VOTE--PERSONS PERMITTED TO VOTE UPON CHOOSING A PARTY.--

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

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

12 ~~G.]~~ B. A person at a primary election shall not be
13 permitted to vote for the candidate of any party other than the
14 party designated on [his] the person's current certificate of
15 registration; provided that a person who has declined to
16 designate a political party affiliation on the person's
17 certificate of registration, or has designated affiliation with
18 an unqualified political party, may choose to affiliate with a
19 party by requesting a ballot in a primary election and vote for
20 the candidates on that party's primary election ballot."

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

23 "1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF
24 VOTERS--USE DURING ELECTION.--

25 A. At each election day polling location, other

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1 than a consolidated precinct where any voter in the county may
2 vote, the precinct board shall post securely at or near the
3 entrance of the polling place one copy of an alphabetical list
4 of voters and a map of the precincts represented in that
5 polling place for use of the voters prior to voting. The
6 posted copy shall not contain a listing of voter addresses,
7 years, months or days of birth or social security numbers.

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

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

17 D. The judge or election clerk assigned to confirm
18 registration shall determine that each person offering to vote
19 is registered and, in the case of a primary election, that the
20 voter is either currently registered in a party designated on
21 the primary election ballot or has declined to designate a
22 party affiliation on the voter's certificate of registration,
23 or has designated affiliation with an unqualified political
24 party, and chooses to affiliate with a party for that primary
25 election by requesting a ballot of a party designated on the

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1 primary election ballot. If the person's registration is
2 confirmed and the voter provides the required voter
3 identification, the judge or election clerk shall announce to
4 the judges or election clerks the list number and the name of
5 the voter as shown on the checklist of voters. If the voter
6 does not provide the required voter identification, the voter
7 shall be allowed to vote on a provisional paper ballot and
8 shall provide the required voter identification to the county
9 clerk's office before 5:00 p.m. on the second day following the
10 election, or to the precinct board before the polls close, or
11 the voter's provisional ballot shall not be qualified. If the
12 required voter identification is provided, the voter's
13 provisional paper ballot shall be qualified and the voter shall
14 not vote on any other type of ballot.

15 E. The judge or election clerk shall locate the
16 name on the signature roster and shall require the voter to
17 sign the voter's usual signature or, if unable to write, to
18 make the voter's mark opposite the voter's printed name. If
19 the voter makes the voter's mark, it shall be witnessed by one
20 of the judges or election clerks of the precinct board.

21 F. If the signature roster indicates that the voter
22 is required to present a physical form of identification before
23 voting, the judge or election clerk shall ask the voter for the
24 required physical form of identification. If the voter does
25 not provide the required identification, the voter shall be

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1 allowed to vote on a provisional paper ballot; provided,
2 however, that if the voter brings the required physical form of
3 identification to the polling place after casting a provisional
4 paper ballot, that ballot shall be qualified.

5 G. The judge or election clerk shall follow the
6 procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA
7 1978 if a person whose name does not appear on the signature
8 roster requests to vote or a person is required to vote on a
9 provisional paper ballot.

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

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

15 "1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

16 A. A voter whose name does not appear on the voter
17 list and signature roster for the precinct in which the voter
18 offers to vote shall be permitted to vote in the precinct
19 pursuant to the federal National Voter Registration Act of 1993
20 and Section 1-12-8 NMSA 1978.

21 B. The judges or election clerks in charge of the
22 signature rosters shall add the voter's name and address in ink
23 to the signature roster on the line immediately following the
24 last entered voter's name, and the voter shall be allowed to
25 sign an affidavit of eligibility and cast a provisional paper

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1 ballot; provided that the voter has first signed or marked both
2 the signature roster and checklist of registered voters.

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

6 D. In a primary election, a voter shall not be
7 permitted to vote for a candidate of a party different from the
8 party designation shown on the voter's certificate of
9 registration unless the voter's certificate of registration
10 shows the voter has declined to designate a party affiliation,
11 or has designated affiliation with an unqualified party, and
12 the voter chooses to affiliate with a party for that primary
13 election by requesting the ballot of a party participating in
14 the primary. Upon making that determination, the county clerk
15 shall transmit the ballot to the county canvassing board to be
16 tallied and included in the canvass of that county for the
17 appropriate precinct."

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

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

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

25 B. the person offering to vote is listed among

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1 those persons to whom an absentee ballot was mailed;

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

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

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

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

13 "1-15A-2. VOTING IN PRESIDENTIAL PRIMARY--DATE OF
14 ELECTION.--

15 A. In the year in which the president and vice
16 president of the United States are to be elected, the
17 registered voters of this state shall be given an opportunity
18 to express their preference for the person to be the
19 presidential candidate of their political party in either a
20 presidential primary election or in accordance with the
21 selection procedure for presidential candidates of each voter's
22 party. The presidential primary election shall be held on the
23 same date as the primary election is held in this state.

24 B. A voter may vote in a presidential primary
25 election on the ballot of only one of the parties participating

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1 in the primary election in accordance with the provisions of
2 Section 1-12-7.1 NMSA 1978."

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

5 "1-15A-8. VOTING IN PRESIDENTIAL PRIMARY--BALLOT
6 POSITION.--

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

16 B. The voter shall be able to [~~cast his ballot~~]
17 vote for one of the presidential candidates on the ballot of
18 [~~his~~] the party with which the voter is affiliated or, if the
19 voter has declined to designate a party affiliation on the
20 voter's certificate of registration, or has designated
21 affiliation with an unqualified political party, with the party
22 that the voter chooses to affiliate with in that election in
23 accordance with the provisions of Section 1-12-7.1 NMSA 1978,
24 or for an uncommitted delegation. A vote of the latter kind
25 shall express the preference for an uncommitted delegation from

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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.