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SENATE BILL 418

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

INTRODUCED BY

Mark Moores and Daniel A. Ivey-Soto

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 CERTAIN PRIMARY ELECTIONS; ALLOWING MAJOR POLITICAL PARTIES TO IMPLEMENT AND CONDUCT A PRIMARY ELECTION AND TO DETERMINE WHO MAY VOTE IN THEIR PRIMARY ELECTIONS.

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

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

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

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

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

21 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

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

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

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

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

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

25 E. If the applicant has on file with the county a

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

19 F. Absentee ballots may be marked in person at the  
20 county clerk's office during the regular hours and days of  
21 business beginning on the twenty-eighth day preceding the  
22 election and from 10:00 a.m. to 6:00 p.m. on the Saturday  
23 immediately prior to the date of the election. The act of  
24 marking the absentee ballot in the office of the county clerk  
25 shall be a convenience to the voter in the delivery of the

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1 absentee ballot and does not make the office of the county  
2 clerk a polling place subject to the requirements of a polling  
3 place in the Election Code. If the county clerk establishes an  
4 additional alternate voting location near the clerk's office,  
5 absentee ballots may be marked in person at that location  
6 during the regular hours and days of business beginning on the  
7 twenty-eighth day preceding the election and during the hours  
8 for voting at alternate voting locations commencing on the  
9 third Saturday prior to the election through the Saturday  
10 immediately prior to the election. The additional alternate  
11 voting location shall be operated by the county clerk and the  
12 county clerk's staff.

13 G. When marking an absentee ballot in person at the  
14 county clerk's office, the voter shall provide the required  
15 voter identification to the county clerk or the clerk's  
16 authorized representative. If the voter does not provide the  
17 required voter identification, the voter shall be allowed to  
18 vote on a provisional ballot. If the voter provides the  
19 required voter identification, the voter, after subscribing an  
20 application for an absentee ballot, shall be allowed to vote by  
21 inserting the ballot into an optical scan tabulator certified  
22 for in-person absentee voting at the county clerk's office.  
23 The county clerk or the clerk's authorized representative shall  
24 make an appropriate designation indicating that the voter has  
25 voted absentee. In marking the absentee ballot, the voter may

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1 be assisted pursuant to the provisions of Section 1-12-15 NMSA  
2 1978.

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

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

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

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

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

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

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

24 A. Notwithstanding the provisions of Sections  
25 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in  
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1 November of each odd-numbered year, a board of county  
2 commissioners may designate a precinct as a mail ballot  
3 election precinct if, upon a written request of the county  
4 clerk, it finds that the precinct has fewer than one hundred  
5 voters and the nearest polling place for an adjoining precinct  
6 is more than twenty miles driving distance from the boundary  
7 for the precinct in question.

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

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

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

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

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

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1           SECTION 4. A new section of the Primary Election Law is  
2 enacted to read:

3           "[NEW MATERIAL] PRIMARY OPEN TO ONLY REGISTERED PARTY  
4 MEMBERS.--

5           A. A major political party may hold a primary  
6 election in which only those individuals who are registered  
7 members of the major political party, or individuals allowed by  
8 the major political party, may vote.

9           B. To hold a primary election pursuant to this  
10 section, a major political party shall:

11                   (1) establish and adopt party rules setting  
12 out that requirement;

13                   (2) notify the secretary of state and county  
14 clerks by certified letter on the date of the governor's  
15 proclamation of the primary election; and

16                   (3) provide the qualifications for an elector  
17 and designate in its entirety the manner in which the primary  
18 election will be held on or before the date designated by the  
19 state for the primary election.

20           C. A major political party that holds a primary  
21 election pursuant to this section shall comply with Sections  
22 1-8-18 through 1-8-33 NMSA 1978.

23           D. A major party that holds a primary election  
24 pursuant to this section shall bear the sole financial and  
25 logistical responsibility for conducting the primary election."

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1           SECTION 5. Section 1-12-7 NMSA 1978 (being Laws 1969,  
2 Chapter 240, Section 246, as amended) is amended to read:

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

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

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

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

22           SECTION 6. Section 1-12-7.1 NMSA 1978 (being Laws 1969,  
23 Chapter 240, Section 112, as amended) is amended to read:

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

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

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

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

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

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

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

22 F. If the signature roster indicates that the voter  
23 is required to present a physical form of identification before  
24 voting, the judge or election clerk shall ask the voter for the  
25 required physical form of identification. If the voter does

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1 not provide the required identification, the voter shall be  
2 allowed to vote on a provisional paper ballot; provided,  
3 however, that if the voter brings the required physical form of  
4 identification to the polling place after casting a provisional  
5 paper ballot, that ballot shall be qualified.

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

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

14 SECTION 7. Section 1-12-7.2 NMSA 1978 (being Laws 1969,  
15 Chapter 240, Section 114, as amended) is amended to read:

16 "1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

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

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

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1 sign an affidavit of eligibility and cast a provisional paper  
2 ballot; provided that the voter has first signed or marked both  
3 the signature roster and checklist of registered voters.

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

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

19 SECTION 8. Section 1-12-20 NMSA 1978 (being Laws 1969,  
20 Chapter 240, Section 273, as amended) is amended to read:

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

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

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

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

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

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

12           SECTION 9. Section 1-15A-2 NMSA 1978 (being Laws 1977,  
13 Chapter 230, Section 2, as amended) is amended to read:

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

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

25           B. A voter may vote in a presidential primary

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1 election on the ballot of only one of the parties participating  
2 in the primary election in accordance with the provisions of  
3 Section 1-12-7.1 NMSA 1978."

4 SECTION 10. Section 1-15A-8 NMSA 1978 (being Laws 1977,  
5 Chapter 230, Section 7, as amended) is amended to read:

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

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

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

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1 shall express the preference for an uncommitted delegation from  
2 New Mexico to the national convention of ~~[that voter's]~~ the  
3 party with which that voter is affiliated."

4 SECTION 11. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2019.

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