

SENATE BILL 254

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Mark Moores

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ELECTIONS; ENACTING NEW PROCEDURES FOR FILLING A VACANCY IN THE OFFICE OF UNITED STATES REPRESENTATIVE; PROVIDING FOR A SPECIAL MAJOR POLITICAL PARTY PRIMARY AND SUBSEQUENT SPECIAL GENERAL ELECTION TO FILL THE VACANCY; PRESCRIBING DECLARATION OF CANDIDACY REQUIREMENTS; REQUIRING CANDIDATES REGARDLESS OF POLITICAL PARTY AFFILIATION TO PAY A FILING FEE OR FILE A NOMINATING PETITION IN LIEU OF FEES; MAKING CONFORMING CHANGES; AMENDING, REPEALING AND ENACTING

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SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

SECTION 1. Section 1-8-33 NMSA 1978 (being Laws 1973, Chapter 228, Section 7, as amended) is amended to read:

"1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--
NUMBER OF SIGNATURES REQUIRED.--

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Candidates who seek preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy. Nominating petitions for those candidates shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party in the state or congressional district, or the following number of voters, whichever is greater: for statewide offices, two hundred thirty voters; and for congressional candidates, seventy-seven voters.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, or the following number of voters, whichever is greater: for

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metropolitan court and magistrate courts, ten voters; [~~for the public regulation commission, fifty voters~~] for the public education commission, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A nominating petition to fill a vacancy in the office of United States representative shall be signed by a number of voters equal to at least one percent of the total number of votes cast in the district.

[D-] E. A candidate who fails to receive the preprimary convention designation that the candidate sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office the candidate seeks, and file a new declaration of candidacy and nominating petitions for the office for which the candidate failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which the candidate failed to receive the designation or on the date all declarations of candidacy and nominating petitions are due pursuant to the provisions of the Primary Election Law, whichever is later."

SECTION 2. Section 1-8-46 NMSA 1978 (being Laws 1977,

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Chapter 322, Section 2) is amended to read:

"1-8-46. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--RIGHT TO BE PLACED ON BALLOT.--The name of any independent candidate for an office to be voted on at a general election or United States representative special general election shall be placed by the proper filing officer on such ballot."

SECTION 3. Section 1-8-48 NMSA 1978 (being Laws 1977, Chapter 322, Section 4, as amended) is amended to read:

"1-8-48. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE ELECTIONS--DECLARATION OF INDEPENDENT CANDIDACY AND NOMINATING PETITION.--

A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.

B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY

I, _____ (candidate's name), being first duly sworn, say that:

I reside at _____;

I did not designate any current affiliation with a qualified political party on my certificate

of registration on or before the date of issuance of the secretary of state's general election proclamation in the year of the general election at which I seek to be a candidate;

I meet the qualifications listed in Section 1-8-45 NMSA 1978 for the office that I seek;

I desire to become a candidate for the office of _____, District _____ at the general election to be held on the date set by law for this year or to fill the vacancy in the office of United States representative at the special general election to be held on the date set by law for this year;

if the office I seek be a state or county district office, I actually reside within the district of the office for which I declare my candidacy, and if the office I seek be a countywide office, I actually reside in the county of the office for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

if a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code;

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and

I make the foregoing affidavit under oath or affirmation knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Declarant)

(Residence Address)

(Mailing Address, if different)

Subscribed and sworn to or affirmed before me
this ____ day of _____, ____.
(month) (year)

(Notary Public)

My commission expires:
_____".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president."

SECTION 4. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter 322, Section 6, as amended) is amended to read:

"1-8-50. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITION

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FORM.--

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special general election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

I, the undersigned, a registered voter of
New Mexico, hereby nominate _____,
who resides at _____ in the county
of _____, New Mexico, as an independent
candidate for the office of _____,
to be voted for at the general election, or United States
representative special general election to be held on

_____, _____
(month) (day) (year)

and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special general election.

1. _____
(usual (name printed (address as (city or zip
signature) as registered) registered code)
2. _____
(usual (name printed (address as (city or zip
signature) as registered) registered code).".

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY
FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of New

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Mexico, by endorsement hereon, petition that the name of _____ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November _____, _____. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election."

E. In March of even-numbered years, the secretary of state shall post on the secretary of state's ~~[web-site]~~ website and shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

SECTION 5. Section 1-8-51 NMSA 1978 (being Laws 1977, Chapter 322, Section 7, as amended) is amended to read:

"1-8-51. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE ELECTIONS--NOMINATING PETITIONS--REQUIRED NUMBER OF SIGNATURES.--

A. The basis of percentage for the total number of
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votes cast in each instance referred to in this section shall be the total vote cast for governor at the last preceding general election at which a governor was elected.

B. Nominating petitions for an independent candidate for president of the United States shall be signed by a number of voters equal to the number of signatures required to form a new political party.

C. Nominating petitions for an independent candidate for United States senator or any other statewide elective office shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the state.

D. Nominating petitions for an independent candidate for United States representative shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district.

E. Nominating petitions for an independent candidate to fill a vacancy in the office of United States representative at a special general election shall be signed by a number of voters equal to at least one percent of the total number of votes cast in the district.

[E-] F. Nominating petitions for an independent candidate for a member of the legislature, [public regulation commission] district judge, district attorney, member of the public education commission, magistrate or county office shall

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be signed by a number of voters equal to at least two percent of the total number of votes cast in the district, division or county, as the case may be.

[F-] G. When a vacancy for any office occurs on the general election ballot pursuant to Section 1-8-7 or 1-8-8 NMSA 1978 in which all political parties may name a general election candidate or when a vacancy occurs in the office of United States representative pursuant to Section 1-15-18.1 NMSA 1978, an independent candidate may file a declaration of candidacy on or by the same deadline applicable to the political parties. The nominating petitions for an independent candidate in such circumstances shall be signed by the number of voters provided in this section, unless there are fewer than:

(1) sixty days from the announcement of the vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to two-thirds the number of voters otherwise required by this section for an independent candidate; or

(2) thirty days from the announcement of the vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to one-third the number of voters otherwise required by this section for an independent candidate.

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[G-] H. A voter shall not sign a petition for an independent candidate as provided in this section if the voter has signed a petition for another independent candidate for the same office."

SECTION 6. Section 1-8-52 NMSA 1978 (being Laws 1977, Chapter 322, Section 8, as amended by Laws 2014, Chapter 40, Section 8 and by Laws 2014, Chapter 81, Section 8) is amended to read:

"1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL GENERAL ELECTIONS--NOMINATING PETITIONS--CIRCULATION--DATE OF FILING.--

A. Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election of each even-numbered year and between 9:00 a.m. and 5:00 p.m. on the [~~fifty-sixth day preceding~~] seventh day following any United States representative special primary election.

B. Declarations of independent candidacy and nominating petitions for the office of president of the United States shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-third day following the primary election."

SECTION 7. Section 1-8-65 NMSA 1978 (being Laws 2014, Chapter 40, Section 7 and Laws 2014, Chapter 81, Section 7) is

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amended to read:

"1-8-65. MINOR POLITICAL PARTY CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL GENERAL ELECTIONS-- NOMINATING PETITION FORM.--

A. As used in Sections 1-8-2 through 1-8-4 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become a minor political party candidate for a political office in a general or United States representative special general election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for a minor political party candidate for any office requiring a nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures approximately three-eighths inch apart and shall be in the following form:

"NOMINATING PETITION FOR MINOR POLITICAL PARTY CANDIDACY (GENERAL ELECTION)

I, the undersigned, a registered voter of New Mexico, hereby nominate _____, who resides at _____ in the county of _____,

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New Mexico, for the _____ party nomination for the office of _____ to be voted for at the general election or United States representative special general election to be held on _____, and I declare that I am a registered voter of the area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election or at a United States representative special general election. I understand that if the candidate's political party does not qualify as a minor political party, the candidate may run as an unaffiliated independent candidate.

1. _____
(usual signature) (name printed (address as (city or zip
as registered) registered) code)
2. _____
(usual signature) (name printed (address as (city or zip
as registered) registered) code)".

D. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a

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petition, each of the sheets shall be in the form prescribed by this section."

SECTION 8. Section 1-15-18.1 NMSA 1978 (being Laws 1983, Chapter 232, Section 16, as amended) is amended to read:

"1-15-18.1. UNITED STATES REPRESENTATIVE--VACANCY.--

A. Within ten days after a vacancy occurs in the office of United States representative, the secretary of state shall, by proclamation, call ~~[an]~~ a special primary election ~~[to be held not less than seventy-seven nor more than ninety-one days after the date of the vacancy]~~ and a special general election for the purpose of filling the vacancy, except as provided in Subsections ~~[H and I]~~ J and K of this section.

B. The proclamation shall forthwith be filed by the secretary of state in the office of the secretary of state. The proclamation shall specify ~~[the]~~:

(1) ~~[date]~~ the dates on which the special primary election and special general election will be held; provided that the special primary election shall be held on a Tuesday that is at least sixty-three days after the date of the proclamation and the special general election shall be held on a Tuesday that is at least sixty-three days after the date of the special primary election;

(2) the purpose for which the election is called;

(3) the date on which declarations of

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candidacy are to be filed by major political party candidates to participate in the special primary election;

(4) the date on which declarations of candidacy are to be filed by minor political party candidates and unaffiliated candidates to participate in the special general election;

[~~(4)~~] (5) the date on which declarations of intent to be a write-in candidate are to be filed; and

[~~(5)~~] (6) the date certificates of registration are to be subscribed and sworn to participate in the election as required by law.

C. After the proclamation is issued pursuant to Subsection B of this section, the secretary of state shall within five days certify the proclamation to each county clerk with precincts located in the United States representative district in which the vacancy exists. Beginning not less than sixty-three days before the date of the election, the secretary of state shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation.

D. [~~Upon the issuance of the proclamation, each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative; provided that such nomination is certified to the secretary of state by the state chair of that party no later than 5:00 p.m. on the fifty-sixth~~]

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~~day preceding the date of the election]~~ A major political party shall nominate its candidate to fill the vacancy in the office of United States representative at the special primary election. A person seeking nomination as a major political party candidate to fill the vacancy shall have the candidate's name placed on the special primary election ballot by filing a declaration of candidacy with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the special primary election and complying with the requirements of Subsection H of this section.

E. A minor political party shall nominate its candidate to fill the vacancy in the office of United States representative in the manner prescribed in its party rules and regulations and shall certify the party's nominee to the secretary of state no later than the tenth day following the special primary election. A certified minor political party candidate shall have the candidate's name placed on the special general election ballot by filing a declaration of candidacy with the secretary of state no later than 5:00 p.m. on the seventh day following the date of the special primary election and complying with the requirements of Subsection H of this section.

~~[E.—Declarations of]~~ F. An unaffiliated
~~[candidacy]~~ candidate to fill the vacancy in the office of
United States representative ~~[and nominating petitions~~

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~~pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election]~~ shall have the candidate's name placed on the special general election ballot by filing a declaration of candidacy with the secretary of state no later than 5:00 p.m. on the tenth day following the date of the special primary election and complying with the requirements of Subsection H of this section.

~~[F. Declarations of intent to be]~~ G. A write-in candidate to fill a vacancy in the office of United States representative shall [be filed] have the candidate's name placed on the special general election ballot by filing a declaration of intent with the secretary of state no later than 5:00 p.m. on the [fifty-sixth] tenth day [preceding] following the date of the special primary election and complying with the requirements of Subsection H of this section.

H. At the time of filing a declaration of candidacy or intent to be a write-in candidate pursuant to Subsections D through G of this section, a person seeking to become a candidate to fill a vacancy in the office of United States representative shall pay a filing fee in the amount of
SRC→~~three thousand dollars (\$3,000)~~←SRC SRC→one thousand dollars (\$1,000)←SRC or, in lieu of paying the filing fee, file a nominating petition signed by a number of voters equal to at least one percent of the total number of votes cast in the

district for governor at the last preceding general election at which a governor was elected.

[G.] I. Special primary elections and special general elections called for the purpose of filling a vacancy in the office of United States representative shall be conducted in accordance with the provisions of the Election Code for general elections; provided, however, if there is a conflict between this section and other provisions of the Election Code, the provisions of this section shall control. The secretary of state shall, only when necessary, adjust the day provided in the Uniform Military and Overseas Voters Act to send ballots to federal qualified electors in an election to fill a vacancy in the office of United States representative. The adjusted day shall be immediately posted on the website of the secretary of state and reported to the federal voting assistance program.

[H.] J. If a vacancy occurs in the office of United States representative beginning [~~one hundred sixty days and no less than sixty-three days before a statewide election, the vacancy shall be filled at the next statewide election; provided that when filling a vacancy~~]:

(1) [~~at~~] less than one hundred sixty days before a general election, a special primary election and special general election to fill the vacancy shall not be held. The candidates seeking the office of United States

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representative in that general election for the next succeeding term shall be deemed to be candidates for the unexpired term as well, and the candidate elected shall take office upon the certification of the election results; [~~or~~

~~(2) at a political party primary or a regular local election]~~ (2) after a general election and ending on the last day of the term, the candidate elected in the general election for the next succeeding term shall fill the vacancy and take office upon certification of the election results;

(3) one hundred sixty days but no less than one hundred thirty days before a political party primary, the special general election to fill the vacancy shall be conducted concurrently with the political party primary. Each political party primary ballot shall contain the special general election to fill the vacancy in the office of United States representative listed before the contests in the political party primary [~~or regular local election~~] and ballots containing only the special general election [~~of~~] to fill the vacancy in the office of United States representative shall be available to voters who do not otherwise qualify to vote in the political party primary [~~or that regular local election~~]; and

(4) ninety days but no less than sixty-three days before a political party primary, the special primary election shall be held concurrently with the political party primary.

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[~~F.~~] K. If a vacancy occurs in the office of United States representative in extraordinary circumstances when there are more than one hundred vacancies in the United States house of representatives and there are more than seventy-five days before a regularly scheduled election, then pursuant to 2 U.S.C. Section 8(b):

(1) the governor shall immediately issue a writ of election, upon which the secretary of state shall, by proclamation, call an election to be held not more than forty-nine days after the vacancy is announced and file the proclamation along with the writ in the office of the secretary of state;

(2) the secretary of state shall immediately certify the proclamation to each county clerk with precincts located in the United States representative district in which the vacancy exists, and beginning not less than thirty-five days before the date of the election, the secretary of state shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation;

(3) each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative; provided that such nomination is certified to the secretary of state by the state chair of that party no later than 5:00 p.m. on the tenth business day following

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announcement of the vacancy;

(4) declarations of independent candidacy to fill the vacancy in the office of United States representative and nominating petitions pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the tenth business day following announcement of the vacancy; and

(5) declarations of intent to be a write-in candidate to fill the vacancy in the office of United States representative shall be filed with the secretary of state no later than 5:00 p.m. on the tenth business day following announcement of the vacancy.

[J-] L. The state shall pay all costs of an election to fill a vacancy in the office of United States representative when the election is not held on the same ballot as a statewide election."

SECTION 9. REPEAL.--Laws 2020, Chapter 9, Sections 5 and 7 are repealed.

SECTION 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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