

SENATE BILL 73

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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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 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 POLITICAL PARTY PARTICIPATING IN A PRIMARY BY REQUESTING THE PARTY'S BALLOT; MAKING CONFORMING CHANGES.

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

**SECTION 1.** Section 1-4-15 NMSA 1978 (being Laws 1969,

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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 but who desires to designate a party affiliation on the voter's certificate of registration shall 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 voter's certificate of registration a party affiliation, or who designated affiliation with a party other than a major political party on the voter's certificate of registration, but who chooses to affiliate with a major political 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 a new or different party affiliation unless the voter so requests in accordance with the provisions of Subsection B of this section."

SECTION 2. Section 1-6-4 NMSA 1978 (being Laws 1969,

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Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. MAILED BALLOT APPLICATION.--

A. In a statewide election, application by a voter for a mailed ballot shall be made only on a paper form or its online equivalent. The form shall identify the applicant and contain information to establish the applicant's qualification for issuance of a mailed ballot under the Absent Voter Act; provided that only on the application form for a primary election ballot there shall be a box, space or place provided for designation of the voter's political party affiliation; and further provided that a voter who has declined to designate a party affiliation on the voter's certificate of registration or who designated affiliation with a party other than a major political party on the voter's certificate of registration, but who chooses to affiliate with a major political party participating in a primary election shall be provided the option on the application form for a mailed ballot in a primary election to request the ballot of one of the parties participating in the primary election.

B. Each application on a paper form for a mailed ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification. When submitted by the voter, the county clerk shall accept an application for a

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mailed ballot pursuant to this subsection regardless of whether the application for a mailed ballot is delivered to the county clerk on paper or by electronic means. When submitted by a third party, the county clerk shall not accept an application for a mailed ballot pursuant to this subsection if the application for a mailed ballot is delivered by electronic means.

C. The secretary of state shall allow a voter to submit an online application for a mailed ballot through a website authorized by the secretary of state; provided that the voter shall have a current or expired New Mexico driver's license or state identification card issued by the motor vehicle division of the taxation and revenue department. An online request for a mailed ballot shall contain all of the information that is required for a paper form. The voter shall also provide the person's full New Mexico driver's license number or state identification card number.

D. When a voter requests a mailed ballot pursuant to this section, the voter shall mark the box associated with the following statement, which shall be included as part of the online mailed ballot request form:

"By clicking the boxes below, I swear or affirm all of the following:

[ ] I am the person whose name and identifying information is provided on this form and I desire to request a

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mailed ballot to vote in the state of New Mexico; and

[ ] All of the information that I have provided on this form is true and correct as of the date I am submitting this form."

E. Online applications for mailed ballots shall retain the dates of submission by the qualified elector and of acceptance by the county clerk. For purposes of deadlines contained in the Election Code, the time and date of the submission by the voter shall be considered the time and date when the application for a mailed ballot is received by the county clerk.

F. New registrants who registered for the first time in this state by mail and at that time did not provide acceptable documentary identification as required by federal law shall be informed of the need to comply with federal identification requirements when returning the requested ballot. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

G. A person who willfully and with knowledge and intent to deceive or mislead any voter, election board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's

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own on a mailed ballot request form is guilty of a fourth degree felony."

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

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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 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 SJC→card←SJC SJC→notice←SJC sent to voters who have not designated a party affiliation on their certificates of registration, or who designated affiliation with a party other than a major political party on the voter's certificate of registration, shall SJC→require that←SJC SJC→inform←SJC such voters SJC→that the voters may←SJC return the card and indicate which major political party's ballot SJC→they choose←SJC SJC→the voter chooses←SJC for that primary election SJC→or log on to a website hosted by the secretary of state to indicate which

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major political party's ballot the voter chooses for that  
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[G-] 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.

[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 TO AFFILIATE WITH 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.

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~~[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 who designated affiliation with a party other than a major political party on the voter's certificate of registration, shall be permitted to choose to affiliate with a major political party in a primary election by requesting a major political party's primary election ballot and shall be permitted to vote for the candidates on that party's 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

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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 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 who designated affiliation with a party other than a major political party on the voter's certificate of registration, and chooses to affiliate with a major political 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

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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 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.

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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 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

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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 that the voter has declined to designate a party affiliation or that the voter designated affiliation with a party other than a major political party on the voter's certificate of registration, and the voter chooses to affiliate with a major political 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 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

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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~~] currently affiliated with a political party represented on the ballot but the person requests a ballot for a party with which the person is not 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 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 NMSA 1978."

SECTION 9. Section 1-15A-8 NMSA 1978 (being Laws 1977,

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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~~] Section 1-10-8.1 NMSA 1978. 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~~] a ballot for one of the presidential candidates 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 the voter designated affiliation with a party other than a major political party on the voter's certificate of registration, the party with which the voter chooses to affiliate in that election in accordance with the provisions of Section 1-12-7 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 the voter is

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affiliated in the primary election."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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