

1 HOUSE BILL 318

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ELECTIONS; REVISING COMPENSATION FOR ELECTION BOARD
12 MEMBERS, THE TIME FOR PROCESSING CERTAIN CERTIFICATES OF
13 REGISTRATION AND CANCELLATIONS, PROVISIONS FOR ACCEPTING AND
14 PROCESSING ABSENTEE BALLOTS AND RETENTION OF VOTING RECORDS.

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

17 SECTION 1. Section 1-2-16 NMSA 1978 (being Laws 1969,
18 Chapter 240, Section 36, as amended) is amended to read:

19 "1-2-16. ELECTION BOARD--COMPENSATION.--

20 A. Members of an election board shall be
21 compensated for their services at the rate of not less than the
22 federal minimum hourly wage rate nor more than [~~two hundred~~
23 ~~dollars (\$200)~~] four hundred dollars (\$400) for an election
24 day.

25 B. Members of an election board assigned to

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1 alternate voting or alternate mobile voting locations or absent
2 voter precincts may be compensated at an hourly rate set by the
3 county clerk.

4 C. Compensation shall be paid by the secretary of
5 state or the county clerk within thirty days following the date
6 of election.

7 D. The secretary of state shall determine if
8 payment is made to each county through a direct payment process
9 to election board members or by means of a grant or
10 reimbursement to the county election fund.

11 [~~D.~~] E. For purposes of determining eligibility for
12 membership in the public employees retirement association and
13 pursuant to the provisions of Subsection B of Section 10-11-3
14 NMSA 1978, election board members are designated as seasonal
15 employees."

16 SECTION 2. Section 1-4-8 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 66, as amended) is amended to read:

18 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF
19 REGISTRATION--CLOSE OF REGISTRATION--LATE REGISTRATION.--For
20 qualified electors seeking to register to vote or update an
21 existing voter registration in the state, the following
22 provisions shall apply:

23 A. to participate in an election, the deadline to
24 register to vote or update an existing voter registration is
25 twenty-eight days prior to that election;

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1 B. the county clerk shall receive certificates of
2 registration at all times during normal working hours, except
3 that the clerk shall not process any certificate of
4 registration subscribed and sworn beginning the first business
5 day after the deadline to register to vote or update an
6 existing voter registration before an election if the
7 residential address on the certificate of registration
8 indicates that the registration is for a:

9 (1) statewide election, within the county; or

10 (2) special election, within any precinct in
11 the county in which votes may be cast in the special election;

12 C. between the deadline to register to vote or
13 update an existing voter registration through the day of the
14 election, the county clerk shall process all:

15 (1) new voter registrations that meet the
16 requirements of this section;

17 (2) updates to existing voter registrations in
18 this state that meet the requirements of this section; provided
19 that an update to an existing registration in this state shall
20 not be processed if the voter has requested or been sent a
21 ballot in the election, unless the voter executes an affidavit
22 stating that the voter has not and will not vote the ballot
23 that was issued and the ballot register does not show that a
24 ballot from the voter has been cast in the election; and

25 (3) pending cancellations of existing voter

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1 registrations in this state through the day of the election;
2 provided that a cancellation of an existing voter registration
3 shall not be processed if the voter has requested or been sent
4 a ballot in the election;

5 D. certificates of registration and cancellations
6 of existing voter registrations not processed pursuant to
7 Subsection B or C of this section ~~[shall]~~ may be processed
8 beginning ~~[thirty-five days after]~~ the Monday following an
9 election and shall be processed beginning no later than the
10 first business day after the approval of the county canvass
11 report for that election, at which time a voter information
12 document shall be mailed to the registrant at the address shown
13 on the certificate of registration; provided that if there is a
14 subsequent election scheduled at which a qualified elector or
15 voter would be eligible to vote if the certificate of
16 registration were processed on an earlier date, the certificate
17 of registration for that qualified elector or voter shall be
18 processed by the county clerk on a day and in a manner to
19 ensure the ability of the qualified elector or voter to vote in
20 the subsequent election;

21 E. when the deadline to register to vote or update
22 an existing voter registration prior to an election referred to
23 in this section is a Saturday, Sunday or state holiday,
24 registration certificates shall be accepted through the next
25 succeeding business day for the office of the county clerk; and

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1 F. the county clerk shall accept for filing and
2 process any certificate of registration that is subscribed and
3 dated on or before the deadline to register to vote or update
4 an existing voter registration prior to an election and:

5 (1) received by the county clerk by the end of
6 the last regular business day of the week for the office of the
7 county clerk immediately following the deadline to register to
8 vote or update an existing voter registration prior to an
9 election;

10 (2) mailed and postmarked on or before the day
11 of the deadline to register to vote or update an existing voter
12 registration prior to any election referred to in this section;
13 or

14 (3) accepted at a state agency designated
15 pursuant to Section 1-4-5.2 NMSA 1978."

16 SECTION 3. Section 1-6-5 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 131, as amended) is amended to read:

18 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

19 A. The county clerk shall mark each completed
20 application for a mailed ballot with the date and time of
21 receipt in the clerk's office and enter the required
22 information in the ballot register. The county clerk shall
23 then determine if the applicant is a voter and if the voter is
24 a uniformed-service voter or an overseas voter. If the
25 applicant is a uniformed-service voter or overseas voter, the

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1 application shall be processed pursuant to the Uniform Military
2 and Overseas Voters Act. An application for a mailed ballot
3 from a voter who is not a federal qualified elector is timely
4 if received by the county clerk no later than fourteen days
5 prior to election day.

6 B. If the applicant does not have a valid
7 certificate of registration on file in the county, a mailed
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 [~~and notify the applicant in writing~~
11 ~~with an explanation why the application was rejected~~].

12 C. When required by federal law, if the applicant
13 has on file with the county a valid certificate of registration
14 that indicates that the applicant is a voter who is a new
15 registrant in the state and who registered by mail without
16 submitting the required documentary identification, the county
17 clerk shall notify the voter that the voter must submit with
18 the mailed ballot a form of documentary identification from the
19 list in Paragraph (3) of Subsection I of Section 1-4-5.1 NMSA
20 1978. The county clerk shall note on the ballot register and
21 signature roster that the applicant's mailed ballot must be
22 returned with the required voter identification.

23 D. If the applicant has on file with the county a
24 valid certificate of registration, the county clerk shall mark
25 the application "accepted" and deliver a mailed ballot to the

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1 voter and the required envelopes for use in returning the
2 ballot.

3 E. Upon the mailing of a mailed ballot to an
4 applicant who is a voter, an appropriate designation shall be
5 made ~~[on the signature line of the signature roster next to the~~
6 ~~name of the voter]~~ in the absentee ballot register.

7 F. A mailed ballot shall not be delivered by the
8 county clerk to any person other than the applicant for the
9 ballot. Mailed ballots shall be sent to applicants beginning
10 twenty-eight days before the election. For each application
11 for a mailed ballot received twenty-three or more days before
12 the election, the county clerk shall send either the ballot or
13 a notice of rejection to the applicant as soon as practicable;
14 provided that the ballot or a notice of rejection is sent not
15 later than twenty-two days before the election. For each
16 application for a mailed ballot received within twenty-two days
17 of election day, the county clerk shall send either the mailed
18 ballot or a notice of rejection to the applicant within twenty-
19 four hours after receipt of the voter's application for a
20 mailed ballot. ~~[A mailed ballot shall be requested not later~~
21 ~~than the Thursday immediately prior to the date of the election~~
22 ~~and shall be sent to the voter not later than the Friday~~
23 ~~immediately prior to the date of the election.]~~

24 G. If the application for a mailed ballot from a
25 voter who is not a federal qualified elector indicates that the

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1 mailed ballot is to be delivered to an address other than an
2 address listed on the voter's certificate of registration, the
3 county clerk shall prepare a notice of requested mailed ballot.
4 The notice of requested mailed ballot shall inform the voter of
5 the address to which the ballot was mailed along with the phone
6 number of the county clerk's office and the internet address of
7 the voter web portal provided by the secretary of state. The
8 county clerk shall not deliver the notice of requested mailed
9 ballot to any person other than the applicant for the ballot.
10 The notice of requested mailed ballot shall be sent to the
11 address provided on the voter's certificate of registration on
12 the same day the county clerk sends the mailed ballot to the
13 address requested by the voter.

14 H. When an application for a mailed ballot is
15 rejected pursuant to this section, the county clerk shall send
16 a notice of rejection to the mailing address on the voter's
17 certificate of registration and the address listed on the
18 voter's application for mailed ballot, if different. The
19 notice of rejection shall indicate the reason for the rejection
20 and, if applicable, information on how to satisfy the
21 rejection. If an application is rejected because it was not
22 timely received, the county clerk shall, within twenty-four
23 hours of receipt of the application, send a rejection notice to
24 the voter that shall include a list of the early voting
25 locations and election day polling places in the county.

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1 I. The county clerk shall only accept applications
2 for a mailed ballot made through the official web portal
3 operated by the secretary of state or submitted on the official
4 paper form sent to the voter by the county clerk. If a voter
5 submits more than one application for a mailed ballot
6 containing the same information, subsequent applications
7 containing the same information shall not be processed."

8 SECTION 4. Section 1-12-69 NMSA 1978 (being Laws 1977,
9 Chapter 222, Section 72, as amended) is repealed and a new
10 Section 1-12-69 NMSA 1978 is enacted to read:

11 "1-12-69. [NEW MATERIAL] DISPOSITION OF PAPER BALLOTS AND
12 RECORDS RELATING TO VOTING.--

13 A. Paper ballots marked by voters, paper records
14 related to voting in any election and materials requested by
15 the secretary of state for canvass, recheck and recount shall
16 be retained and preserved for the greater of:

17 (1) twenty-two months from the date of the
18 election for any election in which a federal office appears on
19 the ballot; or

20 (2) two months from the date of the election
21 for all other elections; or

22 (3) upon resolution of a contest or other
23 judicial inquiry, including all appeals, for any election,
24 precinct or polling place that is the subject of the contest or
25 other judicial inquiry.

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1 B. Following the retention period, paper ballots
2 marked by voters, paper records related to voting and materials
3 requested by the secretary of state for canvass, recount and
4 recheck retained and preserved in the county may be destroyed
5 at a time and in a manner as determined by the county clerk;
6 provided that the county clerk shall use one of the destruction
7 methods approved by the state records administrator for
8 destruction of public records. Any interested person shall be
9 permitted to be present during the destruction of paper
10 materials by the county clerk. At least three days prior to
11 destruction, the clerk shall post on the county website a
12 notice of destruction of paper ballots, paper records related
13 to voting and materials requested by the secretary of state for
14 canvass, recount and recheck and shall provide notice to the
15 county chair of each political party participating in that
16 election. The notice shall include information regarding the
17 election that is the subject of the records destruction and the
18 date, time and place where marked ballots and records related
19 to voting will be destroyed.

20 C. During the retention period, the county clerk
21 may determine that paper ballots marked by voters, physical
22 records related to voting and materials requested by the
23 secretary of state for canvass, recount and recheck from an
24 election should be retained and preserved by the state records
25 administrator. The state records administrator shall receive

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1 for storage paper ballots marked by voters, physical records
2 related to voting and copies of materials requested by the
3 secretary of state for canvass, recheck or recount and,
4 following the retention periods required by this section, may
5 destroy the ballots and physical records pursuant to the
6 procedures used by the state records administrator for
7 destruction of public records following a retention period.
8 The state records administrator may enter into a memorandum of
9 understanding with the secretary of state to cover the costs of
10 storage through the state election fund. The county clerk
11 shall post on the county website a notice at least three days
12 prior to sending ballots and physical records related to voting
13 to the state records administrator.

14 D. Paper ballots marked by voters, their digitized
15 equivalents and records related to voting are exempt from
16 third-party inspection except as otherwise provided in the
17 Election Code beginning ninety days before an election and
18 until the later of sixty days following adjournment of the
19 state or county canvassing board for that election or sixty
20 days following any recount, contest or other judicial inquiry
21 for any election, precinct or polling place that is the subject
22 of the recount, contest or judicial inquiry. Thereafter,
23 during the retention period and prior to destruction of the
24 ballots or records, a third-party inspection not otherwise
25 provided for in the Election Code shall be conducted for good

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1 cause shown and upon order of the district court. When a
2 third-party inspection is ordered, a county clerk or the
3 clerk's agent, the district judge or the court's designated
4 agent and the state records administrator or the state records
5 administrator's agent shall be present during the inspection to
6 ensure that all ballots and records are properly catalogued and
7 returned in proper order. An inspection of paper ballots
8 marked by voters, their digitized equivalents or records
9 related to voting shall be conducted in such a manner as to
10 secure the secrecy of the ballot. Secrecy of the ballot
11 includes redacting precinct-level information when any one
12 party has fewer than five voters in any precinct at any one
13 polling site.

14 E. A person, whether or not an officer, official or
15 custodian, who willfully steals, destroys, conceals, mutilates
16 or alters any record or paper required to be retained by this
17 section is guilty of a misdemeanor for each record or paper
18 that is stolen, destroyed, concealed, mutilated or altered. A
19 person, whether or not an officer, official or custodian who
20 willfully violates the secrecy of the ballot is guilty of a
21 misdemeanor for each record or paper that is not properly
22 redacted.

23 F. Paper ballots marked by voters or other records
24 related to voting that exist in digitized form are not subject
25 to the retention requirements of this section if there is a

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1 paper equivalent of that record retained during the retention
2 period.

3 G. As used in this section, "records related to
4 voting" means all records and papers in the possession of a
5 county clerk relating to any voter application, voter
6 registration or act by a voter or election board requisite to
7 voting in an election."