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SENATE BILL 175

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

INTRODUCED BY

Gregg Schmedes

AN ACT

RELATING TO ELECTIONS; ALLOWING VOTERS TO VOTE IN THE PRIMARY  
ELECTION OF A MAJOR POLITICAL PARTY OF THEIR CHOOSING WITHOUT  
REGARD TO PARTY AFFILIATION.

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

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

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1 for ~~[designation of the voter's political party affiliation]~~  
2 the voter to indicate which political party's ballot the voter  
3 is requesting for the primary election.

4 B. Each application on a paper form for a mailed  
5 ballot shall be signed by the applicant and shall require the  
6 applicant's printed name, registration address and year of  
7 birth to be supplied by the applicant, which shall constitute  
8 the required form of identification. When submitted by the  
9 voter, the county clerk shall accept an application for a  
10 mailed ballot pursuant to this subsection regardless of whether  
11 the application for a mailed ballot is delivered to the county  
12 clerk on paper or by electronic means. When submitted by a  
13 third party, the county clerk shall not accept an application  
14 for a mailed ballot pursuant to this subsection if the  
15 application for a mailed ballot is delivered by electronic  
16 means.

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

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1 number or state identification card number.

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

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

8 [ ] I am the person whose name and identifying  
9 information is provided on this form and I desire to request a  
10 mailed ballot to vote in the state of New Mexico; and

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

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

21 F. New registrants who registered for the first  
22 time in this state by mail and at that time did not provide  
23 acceptable documentary identification as required by federal  
24 law shall be informed of the need to comply with federal  
25 identification requirements when returning the requested

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1 ballot. The secretary of state shall issue rules to exempt  
2 voters from submitting identification only as required by  
3 federal law and shall review and, if necessary, update these  
4 rules no later than March 15 of even-numbered years.

5 G. A person who willfully and with knowledge and  
6 intent to deceive or mislead any voter, election board,  
7 canvassing board, county clerk or other election official and  
8 who falsifies any information on an absentee ballot request  
9 form or who affixes a signature or mark other than the person's  
10 own on a mailed ballot request form is guilty of a fourth  
11 degree felony."

12 SECTION 2. Section 1-6-8 NMSA 1978 (being Laws 1969,  
13 Chapter 240, Section 134, as amended) is amended to read:

14 "1-6-8. MAILED BALLOT ENVELOPES.--

15 A. The secretary of state shall prescribe the form  
16 of, procure and distribute to each county clerk a supply of:

17 (1) official inner envelopes for use in  
18 sealing the completed mailed ballot;

19 (2) official mailing envelopes for use in  
20 returning the official inner envelope to the county clerk,  
21 which shall be postage-paid; provided that only the official  
22 mailing envelope for absentee ballots in a political party  
23 primary shall contain a designation of [~~party affiliation~~] the  
24 political party ballot voted;

25 (3) mailed ballot instructions, describing

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1 proper methods for completion of the ballot and returning it;  
2 and

3 (4) official transmittal envelopes for use by  
4 the county clerk in sending mailed ballot materials.

5 B. Official transmittal envelopes and official  
6 mailing envelopes for transmission of mailed ballot materials  
7 to and from the county clerk and voters shall be printed in  
8 black in substantially similar form. All official inner  
9 envelopes shall be printed in black.

10 C. The reverse of each official mailing envelope  
11 shall contain a form to be executed by the voter completing the  
12 mailed ballot. The form shall identify the voter and shall  
13 contain the following statement: "I have not and will not vote  
14 any other ballot in this election". The official mailing  
15 envelope shall contain a space for the voter to record the  
16 voter's name, registration address and year of birth. The  
17 envelope shall have a security flap to cover this information."

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

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

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

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

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

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

6 C. For a primary election, the card sent to voters  
7 shall require voters to return the card and indicate which  
8 major political party's ballot they choose for that primary  
9 election.

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

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

24 **SECTION 4.** Section 1-6B-4 NMSA 1978 (being Laws 2015,  
25 Chapter 145, Section 28, as amended) is amended to read:

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1           "1-6B-4. ROLE OF SECRETARY OF STATE--FEDERAL UNIFORMED  
2 AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.--

3           A. The secretary of state shall make available to  
4 federal qualified electors information regarding voter  
5 registration procedures for federal qualified electors and  
6 procedures for casting military-overseas ballots.

7           B. The secretary of state shall maintain a web page  
8 dedicated to federal qualified electors. The dedicated web  
9 page shall be accessible from international internet  
10 connections and may be segregated from the main website for the  
11 office of the secretary of state. The secretary of state shall  
12 establish an electronic transmission system through which a  
13 federal qualified elector may apply for and receive voter  
14 registration materials, military-overseas ballots and other  
15 information pursuant to the Uniform Military and Overseas  
16 Voters Act. The secretary of state shall ensure that the  
17 electronic transmission system is capable of accepting a  
18 federal postcard application, any other approved electronic  
19 registration application and any other approved electronic  
20 military-overseas ballot application sent to a county clerk.

21           C. Official transmittal envelopes and official  
22 mailing envelopes for transmission of mailed ballot materials  
23 to and from federal qualified electors shall be in the same  
24 form as those used in the jurisdiction where the voter is  
25 registered except as modified to comply with the Uniform

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1 Military and Overseas Voters Act or federal law. The secretary  
2 of state may, to the extent reasonably possible, coordinate  
3 with other states to develop standardized materials for voting  
4 by mail, including privacy and transmission envelopes and their  
5 electronic equivalents, authentication materials and voting  
6 instructions, to be used with the military-overseas ballot of a  
7 voter authorized to vote in any jurisdiction in this state.

8 D. The secretary of state shall prescribe the form  
9 and content of a declaration for use by a federal qualified  
10 elector to swear or affirm specific representations pertaining  
11 to the voter's identity, eligibility to vote, status as a  
12 federal qualified elector and timely and proper completion of a  
13 military-overseas ballot. The declaration shall be based on  
14 the declaration prescribed to accompany a federal write-in  
15 absentee ballot, as modified to be consistent with the Uniform  
16 Military and Overseas Voters Act. The secretary of state shall  
17 ensure that a form for the execution of the declaration,  
18 including an indication of the date of execution of the  
19 declaration, is a prominent part of all balloting materials for  
20 which the declaration is required.

21 E. The secretary of state shall prescribe to the  
22 county clerk the form of and distribute to each county clerk a  
23 supply of:

24 (1) official inner envelopes for use in  
25 sealing the completed mailed ballot;

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1 (2) official mailing envelopes for use in  
2 returning the official inner envelope to the county clerk,  
3 which shall be postage-paid within the United States postal  
4 system; provided that only the official mailing envelope for  
5 mailed ballots in a political party primary shall contain a  
6 designation of ~~[party affiliation]~~ the political party ballot  
7 voted;

8 (3) mailed ballot instructions describing the  
9 proper methods for completion and return of the ballot,  
10 including instructions for those federal qualified electors  
11 returning a ballot electronically;

12 (4) official transmittal envelopes for use by  
13 the county clerk in mailing ballot materials; and

14 (5) official holding envelopes for ballots  
15 returned electronically by federal qualified electors."

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

18 "1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO  
19 VOTE--PERSONS PERMITTED TO VOTE FOR CANDIDATES OF ANY PARTY.--

20 A. A person shall not vote in a primary, general or  
21 statewide special election unless ~~[he]~~ the person is a voter of  
22 the county in which ~~[he]~~ the person offers to vote. A valid  
23 original certificate of registration in the county register is  
24 prima facie evidence of being a voter in the precinct.

25 ~~[B. A person whose major party affiliation is not~~

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1 ~~designated on his original certificate of registration shall~~  
2 ~~not vote in a primary election.~~

3 ~~G. A person at a primary election shall not be~~  
4 ~~permitted to vote for the candidate of any party other than the~~  
5 ~~party designated on his current certificate of registration.]~~

6 B. A voter, regardless of whether the voter is  
7 affiliated or not affiliated with a political party on the  
8 voter's certificate of voter registration, may vote in the  
9 primary election of a major political party by requesting a  
10 major political party's primary election ballot and shall be  
11 permitted to vote for the candidates on that party's ballot;  
12 provided that the voter may vote in only one major political  
13 party's primary election."

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

16 "1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF  
17 VOTERS--USE DURING ELECTION.--

18 A. At each election day polling location, other  
19 than a consolidated precinct where any voter in the county may  
20 vote, the precinct board shall post securely at or near the  
21 entrance of the polling place one copy of an alphabetical list  
22 of voters and a map of the precincts represented in that  
23 polling place for use of the voters prior to voting. The  
24 posted copy shall not contain a listing of voter addresses,  
25 years, months or days of birth or social security numbers.

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1           B. At each polling location where physical rosters  
2 are used, the presiding judge of the precinct board shall  
3 assign one judge or election clerk of the board to be in charge  
4 of one copy of the checklist of voters, which shall be used to  
5 confirm the registration and voting of each person offering to  
6 vote.

7           C. The presiding judge of the precinct board shall  
8 assign one judge or election clerk to be in charge of the  
9 signature roster.

10          D. The judge or election clerk assigned to confirm  
11 registration shall determine that each person offering to vote  
12 is registered ~~[and, in the case of a primary election, that the~~  
13 ~~voter is registered in a party designated on the primary~~  
14 ~~election ballot]~~. If the person's registration is confirmed  
15 and the voter provides the required voter identification, the  
16 judge or election clerk shall announce to the judges or  
17 election clerks the list number and the name of the voter as  
18 shown on the checklist of voters. If the voter does not  
19 provide the required voter identification, the voter shall be  
20 allowed to vote on a provisional paper ballot and shall provide  
21 the required voter identification to the county clerk's office  
22 before 5:00 p.m. on the second day following the election, or  
23 to the precinct board before the polls close, or the voter's  
24 provisional ballot shall not be qualified. If the required  
25 voter identification is provided, the voter's provisional paper

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1 ballot shall be qualified and the voter shall not vote on any  
2 other type of ballot.

3 E. The judge or election clerk shall locate the  
4 name on the signature roster and shall require the voter to  
5 sign the voter's usual signature or, if unable to write, to  
6 make the voter's mark opposite the voter's printed name. If  
7 the voter makes the voter's mark, it shall be witnessed by one  
8 of the judges or election clerks of the precinct board.

9 F. If the signature roster indicates that the voter  
10 is required to present a physical form of identification before  
11 voting, the judge or election clerk shall ask the voter for the  
12 required physical form of identification. If the voter does  
13 not provide the required identification, the voter shall be  
14 allowed to vote on a provisional paper ballot; provided,  
15 however, that if the voter brings the required physical form of  
16 identification to the polling place after casting a provisional  
17 paper ballot, that ballot shall be qualified.

18 G. The judge or election clerk shall follow the  
19 procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA  
20 1978 if a person whose name does not appear on the signature  
21 roster requests to vote or a person is required to vote on a  
22 provisional paper ballot.

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

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

3           "1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

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

9           B. The judges or election clerks in charge of the  
10 signature rosters shall add the voter's name and address in ink  
11 to the signature roster on the line immediately following the  
12 last entered voter's name, and the voter shall be allowed to  
13 sign an affidavit of eligibility and cast a provisional paper  
14 ballot; provided that the voter has first signed or marked both  
15 the signature roster and checklist of registered voters.

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

19           D. [~~In a primary election, a voter shall not be~~  
20 ~~permitted to vote for a candidate of a party different from the~~  
21 ~~party designation shown on the voter's certificate of~~  
22 ~~registration. Upon making that determination]~~ The county clerk  
23 shall transmit the ballot to the county canvassing board to be  
24 tallied and included in the canvass of that county for the  
25 appropriate precinct."

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

3           "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A  
4 challenge may be interposed by a member of the precinct board  
5 or by a party challenger for the following reasons:

6           A. the person offering to vote is not registered to  
7 vote;

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

10           C. the person offering to vote has already cast a  
11 ballot in that election; or

12           D. the person offering to vote is improperly  
13 registered because the person is not a qualified elector [~~or~~

14           ~~E. in the case of a primary election, the person  
15 desiring to vote is not affiliated with a political party  
16 represented on the ballot]."~~

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

19           "1-15A-2. VOTING IN PRESIDENTIAL PRIMARY--DATE OF  
20 ELECTION.--

21           A. In the year in which the president and vice  
22 president of the United States are to be elected, the  
23 registered voters of this state shall be given an opportunity  
24 to express their preference for the person to be the  
25 presidential candidate [~~of their party~~] in [~~either~~] a

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1 presidential primary election [~~or in accordance with the~~  
2 ~~selection procedure for presidential candidates of each voter's~~  
3 ~~party~~]. The presidential primary election shall be held on the  
4 same date as the primary election is held in this state.

5 B. A voter may vote in a presidential primary  
6 election of only one of the major political parties  
7 participating in the primary election in accordance with the  
8 provisions of Section 1-12-7 NMSA 1978."

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

11 "1-15A-8. VOTING IN PRESIDENTIAL PRIMARY--BALLOT  
12 POSITION.--

13 A. All candidates in the presidential primary shall  
14 appear with the candidates for other offices of their  
15 respective parties at an appropriate place on the ballot.  
16 Candidates who are nominated by committee and by petition  
17 election shall be placed first as a group on the presidential  
18 primary ballot with each candidate's respective position in  
19 that group determined by the provisions of [~~the Ballot~~  
20 ~~Positioning Act~~] Section 1-10-8.1 NMSA 1978. The ballot  
21 position for the uncommitted category shall be placed last on  
22 the presidential primary ballot.

23 B. The voter shall be able to cast [~~his~~] a ballot  
24 for one of the presidential candidates [~~of his party~~] or for an  
25 uncommitted delegation. A vote of the latter kind shall

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

4 SECTION 11. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2023.

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