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HOUSE BILL 41

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Terry T. Marquardt

AN ACT

**RELATING TO ELECTIONS; REQUIRING VOTERS TO PRESENT
IDENTIFICATION WHEN VOTING IN PERSON OR ABSENTEE; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW.**

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

**Section 1. Section 1-4-5.1 NMSA 1978 (being Laws 1993,
Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
as amended) is amended to read:**

"1-4-5.1. METHOD OF REGISTRATION--FORM --

**A. A qualified elector may apply for registration
by mail or in the office of the county clerk.**

**B. Certificate of registration forms may be
requested from the secretary of state or any county clerk in
person, by telephone or by mail for oneself or for others.**

C. Except as provided in Subsection D of this

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1 section, a qualified elector who wishes to register to vote
2 shall fill out completely and sign the certificate of
3 registration. The qualified elector may seek the assistance of
4 any person in completing the certificate of registration.

5 D. A qualified elector who has filed for an order
6 of protection pursuant to the provisions of the Family Violence
7 Protection Act and who presents a copy of that order from a
8 state or tribal court to the registration officer shall not be
9 required to provide address information on the certificate of
10 registration.

11 E. Completed certificates of registration may be
12 mailed or presented in person by the registrant or any other
13 person to the secretary of state or presented in person by the
14 registrant or any other person to the county clerk of the
15 county in which the registrant resides.

16 F. If the registrant wishes to vote in the next
17 election, the completed and signed certificate of registration
18 shall be delivered or mailed and postmarked at least twenty-
19 eight days before the election.

20 G. Upon receipt of a certificate of registration,
21 the secretary of state shall send the certificate to the county
22 clerk in the county where the qualified elector resides.

23 H. Only when the certificate of registration is
24 properly filled out, signed by the qualified elector and
25 accepted for filing by the county clerk as evidenced by [his]

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1 the county clerk's signature or stamp and the date of
2 acceptance thereon and when notice has been received by the
3 registrant shall it constitute an official public record of the
4 registration of the qualified elector.

5 I. The secretary of state shall prescribe the form
6 of the certificate of registration, which form shall be a
7 postpaid mail-in format and shall be printed in Spanish and
8 English. The certificate of registration form shall be clear
9 and understandable to the average person and shall include
10 brief but sufficient instructions to enable the qualified
11 elector to complete the form without assistance. The form
12 shall also include:

13 (1) the question "Are you a citizen of the
14 United States of America?" and boxes for the applicant to check
15 to indicate whether the applicant is or is not a citizen;

16 (2) the question "Will you be at least
17 eighteen years of age on or before election day?" and boxes for
18 the applicant to check to indicate whether the applicant will
19 be eighteen years of age or older on election day;

20 (3) the statement "If you checked 'no' in
21 response to either of these questions, do not complete this
22 form "; and

23 (4) a statement informing the applicant that:

24 (a) if the form is not submitted in
25 person by the applicant and the applicant is registering for

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1 the first time in New Mexico, the applicant must submit with
2 the form a copy of: 1) a current and valid photo
3 identification; or 2) a utility bill, bank statement,
4 government check, paycheck or other government document,
5 including identification issued by an Indian nation, tribe or
6 pueblo, that shows the name and address of the applicant; and

7 (b) [if] the applicant [~~does not~~] must
8 submit the required identification [~~he will be required to do~~
9 ~~so~~] when [~~he votes~~] voting in person or absentee. "

10 Section 2. Section 1-5-10 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 112, as amended) is amended to read:

12 "1-5-10. VOTER LISTS--SIGNATURE ROSTERS--USE DURING
13 ELECTION.--

14 A. Each precinct board using voter lists shall post
15 securely at or near the entrance of the polling place one copy
16 of the voter list for use of the voters prior to voting. The
17 posted copy shall not contain a listing of voter social
18 security numbers.

19 B. The presiding judge of the precinct board shall
20 assign one judge of the board to be in charge of one copy of
21 the voter list, which shall be used to confirm the registration
22 and voting of each person offering to vote.

23 C. The presiding judge of the precinct board shall
24 assign one election clerk to be in charge of the signature
25 roster.

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1 D. The judge assigned to the voter list used for
2 confirmation of registration and voting shall determine that
3 each person offering to vote is registered and, in the case of
4 a primary election, that the voter is registered in a party
5 designated on the primary election ballot. If the person's
6 registration is confirmed by the presence of ~~[his]~~ the person's
7 name on the voter list or if the person presents a certificate
8 under the seal and signature of the county clerk showing that
9 ~~[he]~~ the person is entitled to vote in the election and to vote
10 in that precinct, the judge shall announce to the election
11 clerks the list number and the name of the voter as shown on
12 the voter list.

13 E. The election clerk shall locate that list number
14 and name on the signature roster and shall require the voter to
15 sign ~~[his]~~ the voter's usual signature or, if unable to write,
16 to make ~~[his]~~ the voter's mark opposite ~~[his]~~ the voter's
17 printed name. If the voter makes ~~[his]~~ the voter's mark, it
18 shall be witnessed by one of the judges of the precinct board.
19 ~~[If the signature roster indicates that the voter is required~~
20 ~~to present a form of identification before voting]~~ The election
21 judge shall ask the voter for ~~[a current and valid photo~~
22 ~~identification or]~~ a copy of a current utility bill, bank
23 statement, government check, paycheck or other government
24 document, including identification issued by an Indian nation,
25 tribe or pueblo, that shows and matches the name and address of

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1 the voter as indicated on the signature roster or a current and
2 valid photo identification. If the voter does not provide the
3 required identification, [~~he~~] the voter shall be allowed to
4 vote on a provisional paper ballot.

5 F. The election judge shall follow the procedures
6 provided for in Sections 1-5-12 and 1-12-8 NMSA 1978 if a
7 person whose name does not appear on the signature list
8 requests to vote or a person is required to vote on a
9 provisional paper ballot.

10 G. A voter shall not be permitted to vote until
11 [~~he~~] the voter has properly signed [~~his~~] the voter's usual
12 signature or made [~~his~~] the voter's mark in the signature
13 roster.

14 H. After the poll is closed, the election clerk in
15 charge of a signature roster shall draw a single horizontal
16 line in ink through each signature space in the signature
17 roster where no signature or mark appears. "

18 Section 3. Section 1-6-5 NMSA 1978 (being Laws 1969,
19 Chapter 240, Section 131, as amended by Laws 2003, Chapter 355,
20 Section 4 and by Laws 2003, Chapter 356, Section 19 and also by
21 Laws 2003, Chapter 357, Section 2) is amended to read:

22 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
23 MARKING AND DELIVERY OF BALLOT IN PERSON. --

24 A. The county clerk shall mark each completed
25 absentee ballot application with the date and time of receipt

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1 in the clerk's office and enter the required information in the
2 absentee ballot register. The county clerk shall then
3 determine if the applicant is a voter, an absent uniformed
4 services voter or an overseas voter.

5 B. If the applicant does not have a valid
6 certificate of registration on file in the county and [he] is
7 not a federal qualified elector or if the applicant states [he]
8 that the applicant is a federal qualified elector but [his] the
9 application indicates [he] the applicant is not a federal
10 qualified elector, an absentee ballot shall not be issued and
11 the county clerk shall mark the application "rejected" and file
12 the application in a separate file from those accepted.

13 C. The county clerk shall notify in writing each
14 applicant of the fact of acceptance or rejection of [his] the
15 application and, if rejected, shall explain why the application
16 was rejected.

17 D. ~~[If the applicant has on file with the county a~~
18 ~~valid certificate of registration that indicates that the~~
19 ~~applicant is a voter who registered by mail without submitting~~
20 ~~the required identification]~~ The county clerk shall notify the
21 voter that [he] the voter must submit with [his] the absentee
22 ballot a copy of a ~~[current and valid photo identification]~~
23 utility bill, bank statement, government check, paycheck or
24 other government document, including identification issued by
25 an Indian nation, tribe or pueblo, that shows the name and

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1 address of the applicant [~~The county clerk shall note on the~~
2 ~~absentee ballot register and signature roster that the~~
3 ~~applicant's absentee ballot must be returned with the required~~
4 ~~identification]~~ as it appears on the applicant's certificate of
5 registration or a current and valid photo identification.

6 E. If the county clerk finds that the applicant is
7 a voter other than a federal qualified elector or overseas
8 voter, the county clerk shall mark the application "accepted"
9 and, beginning twenty-eight days before the election, deliver
10 an absentee ballot to the voter in the county clerk's office or
11 mail to the applicant an absentee ballot and the required
12 envelopes for use in returning the ballot. If the county clerk
13 finds that the applicant is a federal qualified elector or
14 overseas voter, the county clerk shall mark the application
15 "accepted" and beginning forty-five days before the election,
16 mail to the applicant an absentee ballot and the required
17 envelopes for use in returning the ballot. Acceptance of an
18 application of a federal qualified elector constitutes
19 registration for the election in which the ballot is to be
20 cast. Acceptance of an application from an overseas voter who
21 is not an absent uniformed services voter constitutes a request
22 for changing information on the certificate of registration of
23 any such voter. An absent voter shall not be permitted to
24 change [his] party affiliation during those periods when change
25 of party affiliation is prohibited by the Election Code. Upon

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1 delivery of an absentee ballot to a voter in the county clerk's
2 office or mailing of an absentee ballot to an applicant who is
3 a voter, an appropriate designation shall be made on the
4 signature line of the signature roster next to the name of the
5 voter who has been provided or mailed an absentee ballot.

6 F. If an application for an absentee ballot is
7 delivered in person to the county clerk and is accepted, and
8 the voter presents the required identification, the county
9 clerk shall provide the voter an absentee ballot and it shall
10 be marked by the applicant in a voting booth of a type
11 prescribed by the secretary of state, sealed in the proper
12 envelopes and otherwise properly executed and returned to the
13 county clerk or ~~[his]~~ the county clerk's authorized
14 representative before the voter leaves the office of the county
15 clerk. The act of marking the absentee ballot in the office of
16 the county clerk shall be a convenience to the voter in the
17 delivery of the absentee ballot and does not make the office of
18 the county clerk a polling place subject to the requirements of
19 a polling place in the Election Code other than is provided in
20 this subsection. It shall be unlawful to solicit votes,
21 display or otherwise make accessible any posters, signs or
22 other forms of campaign literature whatsoever in the clerk's
23 office. Absentee ballots may be marked in person at the county
24 clerk's office during the regular hours and days of business
25 beginning on the twenty-eighth day preceding the election and

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1 from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior
2 to the date of the election. In marking the absentee ballot,
3 the voter, pursuant to the provisions of Section 1-12-15 NMSA
4 1978, may be assisted by one person of the voter's choice.

5 G. Commencing on the third Saturday prior to an
6 election, an absent voter may vote in person, on an electronic
7 voting machine at an alternate location established by the
8 county clerk. In class A counties with more than two hundred
9 thousand registered voters, the county clerk shall establish
10 [~~not less~~] no fewer than twelve alternate voting locations as a
11 convenience to the voters. For class A counties with two
12 hundred thousand registered voters or [~~less~~] fewer, the county
13 clerk shall establish [~~not less~~] no fewer than four alternate
14 voting locations. In non-class A counties with more than ten
15 thousand registered voters, the county clerk shall establish at
16 least one alternate voting location. In non-class A counties
17 with ten thousand registered voters or [~~less~~] fewer, early
18 voting shall be conducted in the office of the county clerk or
19 at such alternative locations as may be designated by the
20 county clerk. Absentee voting may be done at an alternate
21 location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday,
22 and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday
23 immediately prior to the election. The county clerk shall
24 ensure that procedures established for processing an absent
25 voter application and for voting by absentee ballot are

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1 complied with at each alternate location. If the otherwise
2 qualified voter does not present the required form of
3 identification, the voter shall be given a provisional ballot
4 in accordance with the provisions of Section 1-12-8 NMSA 1978.

5 H. Absentee ballots shall be airmailed or, if so
6 requested, electronically transmitted to applicants temporarily
7 domiciled inside or outside the continental limits of the
8 United States not later than on the [~~Thursday~~] Friday
9 immediately prior to the date of the election.

10 I. An absentee ballot shall not be delivered or
11 mailed by the county clerk to any person other than the
12 applicant for such ballot.

13 [~~J. The county clerk shall accept and process, with~~
14 ~~respect to a primary or general election for any federal~~
15 ~~office, any otherwise valid voter registration application from~~
16 ~~an absent uniformed services voter or overseas voter if the~~
17 ~~application is received not less than thirty days before the~~
18 ~~election. The county clerk shall also accept and process~~
19 ~~federal write-in absentee ballots from overseas voters in~~
20 ~~general elections for federal offices in accordance with the~~
21 ~~provisions of Section 103 of the federal Uniformed and Overseas~~
22 ~~Citizens Absentee Voting Act.~~

23 ~~K.]~~ J. The secretary of state and each county clerk
24 shall make reasonable efforts to publicize and inform voters of
25 the times and locations for absentee voting.

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1 K. The secretary of state shall establish
2 procedures for the submittal of required identification with
3 mailed-in absentee ballots."

4 Section 4. Section 1-6-9 NMSA 1978 (being Laws 1969,
5 Chapter 240, Section 135, as amended) is amended to read:

6 "1-6-9. MANNER OF VOTING. --

7 A. A person voting pursuant to the Absent Voter Act
8 shall secretly mark [~~his~~] the absentee ballot in the manner
9 provided in the Election Code for marking emergency paper
10 ballots, place it in the official inner envelope and securely
11 seal the envelope. The voter shall then place the official
12 inner envelope and a copy of the required identification inside
13 the official mailing envelope and securely seal the envelope.
14 The voter shall then complete the form on the reverse of the
15 official mailing envelope, which shall include an affirmation
16 by the voter under penalty of perjury that the facts stated in
17 the form are true.

18 B. Federal qualified electors and overseas voters
19 shall either deliver or mail the official mailing envelope or
20 electronically transmit the absentee ballot to the county clerk
21 of their county of residence or deliver it to a person
22 designated by federal authority to receive executed ballots for
23 transmission to the county clerk of the county of residence or
24 former residence as the case may be. Voters shall either
25 deliver or mail the official mailing envelope to the county

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1 clerk of their county of residence. "

2 Section 5. Section 1-12-8 NMSA 1978 (being Laws 1969,
3 Chapter 240, Section 247, as amended) is amended to read:

4 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING. --

5 A. A person shall be permitted to vote on a
6 provisional paper ballot even though ~~[his]~~ the person's
7 original certificate of registration cannot be found in the
8 county register or even if ~~[his]~~ the person's name does not
9 appear on the signature roster, provided:

10 (1) ~~[his]~~ the person's residence is within the
11 boundaries of the county in which ~~[he]~~ the person offers to
12 vote;

13 (2) ~~[his]~~ the person's name is not on the list
14 of persons submitting absentee ballots; and

15 (3) ~~[he]~~ the person executes a statement
16 swearing or affirming to the best of ~~[his]~~ the person's
17 knowledge that ~~[he]~~ the person is a qualified elector, is
18 currently registered and eligible to vote in that county and
19 has not cast a ballot or voted in that election.

20 B. A voter shall vote on a provisional paper ballot
21 if the voter

22 [~~(1) has not previously voted in a general~~
23 ~~election in New Mexico;~~

24 ~~(2) did not register to vote in person;~~

25 ~~(3) did not submit the required identification~~

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1 ~~with the certificate of registration form; and~~

2 (4)] does not present to the election judge one
3 of the following forms of identification: [~~that matches the~~
4 ~~name and address on the voter's certificate of registration~~

5 (a)] (1) a current and valid photo
6 identification; or

7 [(b)] (2) a copy of a current utility bill,
8 bank statement, government check, paycheck or other government
9 document, including identification issued by an Indian nation,
10 tribe or pueblo, that shows the name and address of the voter
11 and matches the name and address on the voter's certificate of
12 registration.

13 C. An election judge shall have the voter sign the
14 signature roster and issue the voter a provisional paper
15 ballot, an outer envelope and an official inner envelope. The
16 voter shall vote on the provisional paper ballot in secrecy and
17 when done, place the ballot in the official inner envelope and
18 place the official inner envelope in the outer envelope and
19 return it to the precinct officer. The election judge shall
20 ensure that the required information is completed on the outer
21 envelope, have the voter sign it in the appropriate place and
22 place it in an envelope designated for provisional paper
23 ballots.

24 D. Knowingly executing a false statement
25 constitutes perjury as provided in the Criminal Code of this

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1 state, and voting on the basis of such falsely executed
2 statement constitutes fraudulent voting."

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