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SENATE BILL 860

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO ELECTIONS; PERMITTING SAME-DAY REGISTRATION AND  
VOTING AT PRIMARY AND GENERAL ELECTIONS.

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

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

"1-1-16. REGISTRATION OFFICER. --As used in the Election  
Code, "registration officer" means the secretary of state, a  
county clerk or a clerk's authorized deputy, a member of a  
precinct board on election day, a member of the board of  
registration or a state employee performing registration  
duties in accordance with the federal National Voter  
Registration Act of 1993 or Section 1-4-5.2 NMSA 1978."

Section 2. Section 1-4-5.1 NMSA 1978 (being Laws 1993,  
Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,

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1 as amended) is amended to read:

2 "1-4-5.1. METHOD OF REGISTRATION--FORM --

3 A. A qualified elector may apply for registration:

4 (1) by mail;

5 (2) in the office of the secretary of state  
6 or county clerk [~~or~~];

7 (3) with a registration agent or officer; or

8 (4) on election day at a polling place in the  
9 county in which the qualified elector resides.

10 B. A person may request certificate of  
11 registration forms [~~may be requested~~] from the secretary of  
12 state or any county clerk in person, by telephone or by mail  
13 for [~~oneself~~] that person or for [~~others~~] other persons. A  
14 qualified elector may request a certificate of registration  
15 form from a precinct board member on election day at a polling  
16 place in the county in which the qualified elector resides.

17 C. Except as provided in Subsection D of this  
18 section, a qualified elector who wishes to register to vote  
19 shall fill out completely and sign the certificate of  
20 registration. The qualified elector may seek the assistance  
21 of any person in completing the certificate of registration.

22 D. A qualified elector who has filed for an order  
23 of protection pursuant to the provisions of the Family  
24 Violence Protection Act and who presents a copy of that order  
25 from a state or tribal court to the registration officer shall

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1 not be required to provide address information on the  
2 certificate of registration.

3 E. Completed certificates of registration may be  
4 mailed or presented in person by the registrant or any other  
5 person to the secretary of state [or], presented in person by  
6 the registrant or any other person to the county clerk of the  
7 county in which the registrant resides or presented on  
8 election day in person by the registrant to a precinct board  
9 member at a polling place in the county in which the  
10 registrant resides.

11 F. If the registrant wishes to vote in the next  
12 election, the completed and signed certificate of registration  
13 shall be delivered or mailed and postmarked at least twenty-  
14 eight days before the election or presented on election day in  
15 person by the registrant to a precinct board member at a  
16 polling place in the county in which the registrant resides.

17 G. A certificate of registration presented by a  
18 registrant to a precinct board member on election day shall be  
19 returned to the county clerk with the election returns and  
20 materials destined for the county clerk.

21 [~~G.~~] H. Upon receipt of a certificate of  
22 registration, the secretary of state shall send the  
23 certificate to the county clerk in the county where the  
24 qualified elector resides.

25 [~~H.~~] I. Only when the certificate of registration

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1 is properly filled out, signed by the qualified elector and  
2 accepted for filing by the county clerk as evidenced by the  
3 county clerk's signature or stamp and the date of acceptance  
4 thereon and when notice has been received by the registrant  
5 shall it constitute an official public record of the  
6 registration of the qualified elector.

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

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

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

23 (3) the statement "If you checked 'no' in  
24 response to either of these questions, do not complete this  
25 form ";

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1 (4) a statement informing the applicant that:

2 (a) if the form is submitted by mail by  
3 the applicant and the applicant is registering for the first  
4 time in New Mexico, the applicant must submit with the form a  
5 copy of: 1) a current and valid photo identification [~~or~~  
6 ~~voter identification~~] card; or 2) a utility bill, bank  
7 statement, government check, paycheck, student identification  
8 card or other government document, including identification  
9 issued by an Indian nation, tribe or pueblo, that shows the  
10 name and address of the applicant; and

11 (b) if the applicant does not submit  
12 the required identification, [~~he~~] the applicant will be  
13 required to do so when voting in person or absentee; and

14 (5) a statement requiring the applicant to  
15 swear or affirm that the information supplied by the applicant  
16 is true."

17 Section 3. Section 1-4-8 NMSA 1978 (being Laws 1969,  
18 Chapter 240, Section 66, as amended) is amended to read:

19 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF  
20 REGISTRATION--CLOSE OF REGISTRATION--ELECTION-DAY  
21 REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--  
22 LATE REGISTRATION.--

23 A. For qualified electors other than federal  
24 qualified electors or overseas voters, the following  
25 provisions shall apply:

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1 (1) the county clerk shall receive  
2 certificates of registration at all times during normal  
3 working hours, except that the clerk shall close registration  
4 at 5:00 p. m. on the twenty-eighth day immediately preceding  
5 any election at which the registration books are to be  
6 furnished to the precinct board;

7 (2) on election day, the county clerk shall  
8 accept and file certificates of registration for qualified  
9 electors who register to vote on election day at a polling  
10 place in the county in which the qualified elector resides;

11 [~~(2)~~] (3) registration shall be reopened on  
12 the Monday following the election;

13 [~~(3)~~] (4) for purposes of a municipal or  
14 school election, the registration period for those precincts  
15 within the municipality or school district is closed at 5:00  
16 p. m. on the twenty-eighth day immediately preceding the  
17 municipal or school election and is opened again on the Monday  
18 following the election;

19 [~~(4)~~] (5) during the period when registration  
20 is closed, the county clerk shall receive certificates of  
21 registration and other documents pertaining thereto but,  
22 except for certificates of registration received on election  
23 day, shall not file the certificate of registration in the  
24 registration book until the Monday following the election, at  
25 which time a voter identification card shall be mailed to the

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1 registrant at the address shown on the certificate of  
2 registration;

3 [~~(5)~~] (6) when the twenty-eighth day prior to  
4 any election referred to in this section is a Saturday, Sunday  
5 or legal holiday, registration shall be closed at 5:00 p. m. of  
6 the next succeeding regular business day for the office of the  
7 county clerk; and

8 [~~(6)~~] (7) the county clerk shall accept for  
9 filing any certificate of registration that is subscribed and  
10 dated on or before the twenty-eighth day preceding the  
11 election and received by the county clerk before 5:00 p. m. on  
12 the Friday immediately following the close of registration.

13 The county clerk shall accept for filing any mailed  
14 certificate of registration postmarked not less than twenty-  
15 eight days prior to any election referred to in this section  
16 and received by 5:00 p. m. on the Friday immediately following  
17 the close of registration. The county clerk shall accept for  
18 filing any certificate of registration accepted at a state  
19 agency designated pursuant to Section 1-4-5.2 NMSA 1978 not  
20 later than twenty-eight days prior to any election.

21 B. For federal qualified electors and overseas  
22 voters, the county clerk shall accept a certificate of  
23 registration by electronic transmission from a voter qualified  
24 to apply for and vote by absentee ballot in the county if the  
25 transmission is received before 5:00 p. m. on the Friday

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1 immediately preceding the election. "

2 Section 4. Section 1-12-7.2 NMSA 1978 (being Laws 1969,  
3 Chapter 240, Section 114, as amended) is amended to read:

4 "1-12-7.2. [VOTER] QUALIFIED ELECTOR WHOSE NAME IS NOT  
5 ON LIST OR ROSTER. - -

6 A. A [voter] qualified elector whose name does not  
7 appear on the voter list and signature roster for the precinct  
8 in which [he] the qualified elector offers to vote may  
9 register and shall be permitted to vote in the precinct  
10 pursuant to the federal National Voter Registration Act of  
11 1993 and Section  
12 1-12-8 NMSA 1978.

13 B. [~~The election clerks in charge of the signature~~  
14 ~~rosters shall add the voter's name and address in ink to the~~  
15 ~~signature roster on the line immediately following the last~~  
16 ~~entered voter's name and the voter shall be allowed to sign an~~  
17 ~~affidavit of eligibility and cast a provisional paper ballot,~~  
18 ~~provided he has first signed or marked both the signature~~  
19 ~~roster and checklist of registered voters.] If the qualified  
20 elector is not registered to vote and is at the polling place  
21 for the precinct in which the qualified elector resides, the  
22 qualified elector shall be allowed to complete a certificate  
23 of registration and cast a ballot; provided the qualified  
24 elector presents a current and valid photo identification  
25 card, utility bill, bank statement, government check,~~

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1 paycheck, student identification card or other government  
2 document, including identification issued by an Indian nation,  
3 tribe or pueblo, that shows the name and address of the  
4 applicant and signs or marks both the signature roster and  
5 checklist of registered voters. If the qualified elector is  
6 not registered to vote and is at a polling place for a  
7 precinct where the qualified elector does not reside, the  
8 qualified elector shall be allowed to sign an affidavit of  
9 eligibility and cast a provisional paper ballot; provided the  
10 polling place is within the county in which the qualified  
11 elector resides and the qualified elector presents a current  
12 and valid photo identification card, utility bill, bank  
13 statement, government check, paycheck, student identification  
14 card or other government document, including identification  
15 issued by an Indian nation, tribe or pueblo, that shows the  
16 name and address of the qualified elector and signs or marks  
17 both the signature roster and checklist of registered voters.  
18 Once the qualified elector is registered to vote, the election  
19 clerks in charge of the signature rosters shall add the  
20 voter's name and address in ink to the signature roster on the  
21 line immediately following the last entered voter's name.

22 C. The provisional paper ballot number for the  
23 [~~voter~~] person shall be entered on the affidavit of  
24 eligibility, the signature roster and the checklist of  
25 registered voters.

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1           D. In a primary election, a voter shall not be  
2 permitted to vote for a candidate of a party different from  
3 the party designation shown on ~~[his]~~ the voter's certificate  
4 of registration. Upon making that determination, the county  
5 clerk shall transmit the ballot to the county canvassing board  
6 to be tallied and included in the canvass of that county for  
7 the appropriate precinct.

8           E. Verbal authorization from the county clerk to  
9 allow a person to vote is not permitted."

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

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

13           A. A person shall be permitted to vote on a  
14 provisional paper ballot even though the person's original  
15 certificate of registration cannot be found in the county  
16 register or even if the person's name does not appear on the  
17 signature roster, provided:

18                   (1) the person's residence is within the  
19 boundaries of the county in which the person offers to vote;  
20 and

21                   (2) the person's name is not on the list of  
22 persons submitting absentee ballots; and either

23                   (3) the person executes a statement swearing  
24 or affirming to the best of the person's knowledge that the  
25 person is a qualified elector, is currently registered and

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1 eligible to vote in that county and has not cast a ballot or  
2 voted in that election; or

3 (4) the person is not registered and  
4 registers to vote in accordance with the provisions of Section  
5 1-12-7.2 NMSA 1978 on election day at a polling place for a  
6 precinct within which the person does not reside.

7 B. A voter shall vote on a provisional paper  
8 ballot if the voter:

9 (1) has not previously voted in a general  
10 election in New Mexico or has been purged from the voter list;

11 (2) registered to vote by mail;

12 (3) did not submit the physical form of the  
13 required voter identification with the certificate of  
14 registration form; and

15 (4) does not present to the election judge a  
16 physical form of the required voter identification.

17 C. A voter shall vote on a provisional ballot in  
18 accordance with the provisions of Section 1-12-7.1 NMSA 1978  
19 if the voter does not provide the required voter  
20 identification to the election judge.

21 D. An election judge shall have the voter sign the  
22 signature roster and issue the voter a provisional paper  
23 ballot, an outer envelope and an official inner envelope. The  
24 voter shall vote on the provisional paper ballot in secrecy  
25 and when done, place the ballot in the official inner envelope

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1 and place the official inner envelope in the outer envelope  
2 and return it to the precinct officer. The election judge  
3 shall ensure that the required information is completed on the  
4 outer envelope, have the voter sign it in the appropriate  
5 place and place it in an envelope designated for provisional  
6 paper ballots.

7 E. Knowingly executing a false statement  
8 constitutes perjury as provided in the Criminal Code of this  
9 state, and on voting on the basis of such falsely executed  
10 statement constitutes fraudulent voting. "

11 Section 6. Section 1-12-8.1 NMSA 1978 (being Laws 2005,  
12 Chapter 270, Section 62) is amended to read:

13 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S [COPY]  
14 RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES. --If a  
15 [~~voter whose~~] voter's name is not in the signature roster for  
16 the precinct in which the voter resides and the voter presents  
17 the voter's [~~duplicate~~] receipt of the voter's certificate of  
18 registration, the [~~voter shall be allowed to vote on a~~  
19 ~~provisional ballot in the proper precinct in accordance with~~  
20 ~~the provisions of Section 1-5-10 NMSA 1978.~~ The] election  
21 judge shall inform the voter that the voter will be notified  
22 by the county clerk to provide a copy of the receipt of the  
23 certificate of registration to the county clerk if the  
24 original certificate is not located. The voter shall be  
25 allowed to register and cast a ballot as provided in the

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1 Election Code. A note shall be entered on the signature  
2 roster indicating that the voter's certificate of registration  
3 should be checked by the county clerk. For the purposes of  
4 investigation or prosecution, the county clerk shall provide  
5 the district attorney and the secretary of state with the  
6 person's name and address and the corresponding receipt number  
7 of the person's certificate of registration for each person  
8 whose certificate of registration is not located."

9 Section 7. Section 1-12-20 NMSA 1978 (being Laws 1969,  
10 Chapter 240, Section 273, as amended) is amended to read:

11 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--

12 A challenge may be interposed by a member of the precinct  
13 board or by a party challenger for the following reasons:

14 A. the person [~~presenting himself~~] who has come to  
15 vote is not registered and is not a qualified elector;

16 B. the person [~~presenting himself~~] who has come to  
17 vote is listed on the purge list placed with the signature  
18 rosters or is listed among those persons in the precinct from  
19 whom an absentee ballot was received;

20 C. the person [~~presenting himself~~] who has come to  
21 vote is improperly registered because [~~he~~] the person is not a  
22 qualified elector;

23 D. in the case of a primary election, the person  
24 [~~presenting himself~~] who has come to vote is not affiliated  
25 with a political party represented on the ballot; or

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1           E. in the case of an absentee ballot, the official  
2 outer envelope of the absentee voter has been opened prior to  
3 the counting of the ballots."

4           Section 8. Section 1-12-25.4 NMSA 1978 (being Laws 2003,  
5 Chapter 356, Section 7, as amended) is amended to read:

6           "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

7           A. Upon closing of the polls, provisional paper  
8 ballots shall be delivered to the county clerk, who shall  
9 determine if the ballots will be counted prior to  
10 certification of the election.

11           B. A provisional paper ballot shall not be counted  
12 if the registered voter did not sign either the signature  
13 roster or the ballot's envelope.

14           ~~[C. If there is no record of the voter ever having~~  
15 ~~been registered in the county, the voter shall be offered the~~  
16 ~~opportunity to register and the provisional paper ballot shall~~  
17 ~~not be counted.]~~

18           ~~D. ]~~ C. If the voter was registered in the county,  
19 the registration was later canceled and the county clerk  
20 determines that the cancellation was in error, the voter's  
21 registration shall be immediately restored and the provisional  
22 paper ballot counted.

23           ~~[E. ]~~ D. If the county clerk determines that the  
24 cancellation was not in error, the voter shall be offered the  
25 opportunity to register at the voter's correct address, and

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1 the provisional paper ballot shall not be counted.

2 [F-] E. If the voter is a registered voter in the  
3 county, but has voted on a provisional paper ballot at a  
4 polling place other than the voter's designated polling place,  
5 the county canvassing board shall ensure that only those votes  
6 for the positions or measures for which the voter was eligible  
7 to vote are counted.

8 [G-] F. If the county clerk finds that the voter  
9 who voted on a provisional paper ballot at the polls has also  
10 voted on an absentee ballot in that election, the provisional  
11 paper ballot shall not be counted.

12 [H-] G. The county canvassing board shall prepare  
13 a tally displaying the number of provisional paper ballots  
14 received, the number found valid and counted, the number  
15 rejected and not counted and the reason for not counting the  
16 ballots as part of the canvassing process and forward it to  
17 the secretary of state immediately upon certification of the  
18 election.

19 [I-] H. The secretary of state shall issue rules  
20 to ensure securing the secrecy of the provisional paper  
21 ballots, especially during canvassing, reviewing or  
22 recounting, and protecting against fraud in the voting  
23 process. "