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HOUSE BILL 260

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONSERVANCY DISTRICTS; REQUIRING ELECTIONS WITHIN CERTAIN CONSERVANCY DISTRICTS TO BE CONDUCTED BY MAIL-IN BALLOT BY THE COUNTY CLERKS OF THE APPROPRIATE COUNTIES.

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

SECTION 1. Section 73-14-20 NMSA 1978 (being Laws 1975, Chapter 262, Section 3, as amended) is amended to read:

"73-14-20. DEFINITIONS.--As used in Sections 73-14-18 through ~~[73-14-32]~~ 73-14-30 NMSA 1978:

~~[A. "absent voter" means a qualified elector who has requested an absentee ballot forty days prior to an election;~~

~~B. "absentee-early voter" means a qualified elector who has voted early, prior to election day, on an electronic voting machine at a designated absentee-early voter precinct;~~

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1           ~~G.~~ A. "benefited area" means that area described  
2 by a property appraisal that receives a benefit as a result of  
3 the creation of a district for any of the purposes specified in  
4 Section 73-14-4 NMSA 1978;

5           ~~D.~~ B. "election director" means the ~~[person whom~~  
6 ~~the board of directors may request to provide election services~~  
7 ~~by a contract approved by the secretary of state]~~ county clerk  
8 in each county in which the district is located;

9           ~~E.~~ C. "election officer" means a person appointed  
10 by ~~[the board of directors]~~ an election director to conduct the  
11 election in the absence of an election director and who  
12 performs all election services required by statute;

13           ~~F.~~ D. "list compiler" means a contractor approved  
14 by the ~~[board of directors]~~ election directors to compile and  
15 produce a qualified elector list for a conservancy district;

16           ~~G.~~ E. "qualified elector" means an individual who  
17 owns real property within the benefited area of the conservancy  
18 district and who has provided proof of an ownership interest to  
19 one of the sources specified in Subsection B of Section  
20 73-14-20.1 NMSA 1978 within the required time period or who  
21 resides on and owns legal or equitable title in tribal lands  
22 and who is over the age of majority;

23           ~~H.~~ F. "qualified ~~[elector's]~~ elector list" means  
24 the list compiled before each election that contains the  
25 individual names of all qualified electors; and

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1           [~~F.~~] G. "residence" means a dwelling that lies  
2 partially or completely within the benefited area."

3           SECTION 2. Section 73-14-20.1 NMSA 1978 (being Laws 1990,  
4 Chapter 48, Section 1, as amended) is amended to read:

5           "73-14-20.1. QUALIFIED ELECTOR LIST.--

6           A. The [~~board of~~] election directors [~~of the~~  
7 ~~conservancy district~~] may contract for a list compiler before  
8 each election to compile and produce a qualified [~~elector's~~]  
9 elector list for the conservancy district. The list compiler  
10 shall deliver the completed list to the election director no  
11 later than forty-five days prior to a district election. An  
12 individual who purchases property less than ninety days prior  
13 to an election and whose name does not appear on the qualified  
14 [~~elector's~~] elector list shall not vote in that election. The  
15 individual may become certified to vote in a future election by  
16 filing [~~his~~] the deed of title with the appropriate county  
17 clerk at least ninety days before the next conservancy district  
18 election.

19           B. Names of qualified electors shall be obtained  
20 from the records of the county clerk of the appropriate county,  
21 the appropriate county assessor of the appropriate county or  
22 records of the conservancy district or from the census bureau  
23 and enrollment records provided by the pueblos. The county  
24 assessor of the appropriate county, the county clerk of the  
25 appropriate county and the tribal representatives of the

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1 appropriate pueblos shall deliver to the election director all  
2 records regarding qualified electors of the benefited area no  
3 later than the last day of each March before a district  
4 election.

5 C. Updating the qualified [~~elector's~~] elector list  
6 shall consist of adding, for any new qualified elector who has  
7 purchased property in the district, the name, address and  
8 description of all property owned by the qualified elector in  
9 the benefited area and removing the name of any elector who is  
10 deceased or [~~is no longer a qualified elector because he~~] who  
11 no longer owns property within the benefited area. In  
12 addition, the list compiler shall ensure that the owner of more  
13 than one property in the district is not listed more than once  
14 on the qualified elector list.

15 D. Proof of ownership of land within the benefited  
16 area requires one of the following:

17 (1) a recorded deed or real estate contract  
18 indicating current ownership of land within the benefited area;

19 (2) an individual's name on county clerk  
20 records indicating a description of property the individual  
21 owns within the benefited area;

22 (3) an individual's name on a list compiled by  
23 the governing body of a pueblo within the benefited area  
24 indicating that the individual named is residing on and has  
25 legal or equitable title in the pueblo; or

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1 (4) a current property tax bill indicating  
2 ownership of land within the benefited area.

3 E. ~~[The election officer or the election director~~  
4 ~~shall distribute to each polling place a current qualified~~  
5 ~~elector's list for the appropriate county. The election~~  
6 ~~officer or the election director shall distribute the qualified~~  
7 ~~elector's list to each polling place within a pueblo located~~  
8 ~~within the benefited area. A qualified elector may vote at any~~  
9 ~~one polling place in the pueblo or county where he owns land.]~~  
10 An individual who seeks to cast [his] a vote but [finds his]  
11 whose name is not on the qualified [elector's] elector list  
12 shall not be allowed to vote in that election."

13 SECTION 3. Section 73-14-24 NMSA 1978 (being Laws 1975,  
14 Chapter 262, Section 7, as amended) is amended to read:

15 "73-14-24. TIME AND PROCEDURE FOR ELECTION.--

16 A. On the first Tuesday after the first Monday in  
17 January prior to the middle Rio Grande conservancy district  
18 election, an election proclamation shall be published that  
19 includes a list of the offices for which a candidate may file,  
20 the date and place at which declarations of candidacy shall be  
21 filed and the date of the election. The election proclamation  
22 shall be published once in a newspaper of general circulation  
23 in the counties in which the election shall be held.

24 B. The members of the boards of directors created  
25 pursuant to provisions of Sections 73-14-18 through [73-14-32]

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1 73-14-30 NMSA 1978 shall be elected by mail-in ballot at an  
2 election held on the first Tuesday after the first Monday in  
3 June [~~in 2001 and~~] in each odd-numbered year [~~thereafter~~].

4 C. The elections for the members of the board of  
5 directors of the conservancy district shall be conducted,  
6 counted and canvassed as provided in Sections 73-14-18 through  
7 [~~73-14-32 and 73-14-84 through 73-14-86~~] 73-14-30 NMSA 1978.  
8 [~~The polls may be opened and closed in the same manner as~~  
9 ~~provided for the general election under the Election Code.~~

10 ~~D. If only one candidate has filed a declaration of~~  
11 ~~candidacy for a position to be filled at an election, no~~  
12 ~~declared write-in candidate has filed for a position and there~~  
13 ~~are no questions or bond issues on the ballot, only one polling~~  
14 ~~place for the election may be designated. The one polling~~  
15 ~~place may be located in the office of the election director or~~  
16 ~~in the office of the middle Rio Grande conservancy district.]~~

17 D. The board of directors may promulgate necessary  
18 and reasonable rules for instructions to voters, methods to  
19 allow for write-in candidates and methods of determining voter  
20 eligibility."

21 SECTION 4. Section 73-14-27 NMSA 1978 (being Laws 1975,  
22 Chapter 262, Section 10, as amended) is amended to read:

23 "73-14-27. ELECTION [~~LOCATION OF POLLING PLACES~~]-NOTICE  
24 OF ELECTION [~~CREATION OF ABSENT VOTER PREGINCT~~].--[A.] For  
25 every conservancy district election, [~~the board of directors~~

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1 ~~shall provide for adequate polling places within the boundaries~~  
2 ~~of the conservancy district. In addition, the board of~~  
3 ~~directors shall provide a polling place at the main office of~~  
4 ~~the conservancy district and may provide such other locations~~  
5 ~~as it deems necessary. The board of directors may also create~~  
6 ~~absentee-early voter and absent voter precincts.~~

7           B.] notice of the election shall be published three  
8 times in a newspaper of general circulation within each county  
9 of the district. Each notice shall state the time [place] and  
10 purpose of the election and that each qualified elector will  
11 receive a mail-in ballot prior to the election. Notice shall  
12 be published [~~twenty~~] thirty, ten and five days before the  
13 election."

14           SECTION 5. Section 73-14-28 NMSA 1978 (being Laws 1975,  
15 Chapter 262, Section 11, as amended) is amended to read:

16           "73-14-28. ELECTION JUDGES.--The election officer or the  
17 election [~~director~~] directors shall select [~~two or more~~] three  
18 election judges for [~~each polling place established within~~] the  
19 conservancy district. [~~The election officer or the election~~  
20 ~~director shall also appoint absentee-early voter and absent~~  
21 ~~voter precinct boards.~~]"

22           SECTION 6. Section 73-14-28.1 NMSA 1978 (being Laws 1996,  
23 Chapter 42, Section 12) is amended to read:

24           "73-14-28.1. ELECTION.--The [~~board of~~] election directors  
25 [~~of the conservancy district~~] shall conduct the election

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1 pursuant to [~~Chapter 73, Article 14~~] Sections 73-14-18 through  
2 73-14-30 NMSA 1978 and other applicable election laws or shall  
3 select an election [~~director as defined in Section 73-14-20~~  
4 ~~NMSA 1978~~] officer to provide election services. The election  
5 director shall operate pursuant to a contract approved by the  
6 secretary of state. The election [~~may~~] shall be conducted by  
7 [~~emergency paper ballot, electronic voting machine or any other~~  
8 ~~state-certified tabulating voting machine~~] mail-in ballot."

9 SECTION 7. Section 73-14-29 NMSA 1978 (being Laws 1975,  
10 Chapter 262, Section 12, as amended) is amended to read:

11 "73-14-29. FORM OF BALLOT--ELECTION MATERIALS.--The  
12 election officer or [~~the~~] election [~~director~~] directors shall  
13 oversee the preparation and printing of the [~~ballots~~] election  
14 materials for a conservancy district election. [~~Ballots~~]  
15 Election materials shall be prepared and printed at the expense  
16 of the conservancy district. [~~The election officer or the~~  
17 ~~election director shall oversee the preparation of a separate~~  
18 ~~ballot for each county within the conservancy district or the~~  
19 ~~preparation of one ballot for use within the entire conservancy~~  
20 ~~district.] The [~~board of~~] election directors shall approve the  
21 form of the [~~ballot. The ballot shall contain the numbered~~  
22 ~~position or positions as the case may be to which directors are~~  
23 ~~to be elected at the election, with the names of all candidates~~  
24 ~~for each position listed under that designation~~] election  
25 materials. Election materials shall include:~~

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1           A. ballots. The election officer or election  
2 director may prepare a separate ballot for each county within  
3 the conservancy district or one ballot for use within the  
4 entire conservancy district. For elections at which directors  
5 of the board are selected, the ballot shall contain the  
6 numbered positions to which directors are to be elected at the  
7 election, with names of all candidates for each position listed  
8 under that designation;

9           B. official inner envelopes for use in sealing  
10 completed ballots;

11           C. official mailing envelopes for use in returning  
12 the official inner envelopes to the election officer or  
13 election director. The reverse of each official mailing  
14 envelope shall contain a form, to be executed by the qualified  
15 elector completing the ballot, that contains such affirmations  
16 as the election officer or election director shall prescribe;

17           D. ballot instructions describing how to complete  
18 and return ballots; and

19           E. official transmittal envelopes for use by the  
20 election officer or election director in mailing ballot  
21 materials."

22           SECTION 8. A new Section 73-14-29.1 NMSA 1978 is enacted  
23 to read:

24           "73-14-29.1. [NEW MATERIAL] MAILED BALLOTS--QUALIFIED  
25 ELECTOR LIST--NOTICE.--

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1           A. The election officer or election director shall  
2 enter the following on the qualified elector list:

3                   (1) the date of the mailing of the ballot to  
4 each qualified elector; and

5                   (2) the date and time the completed ballot was  
6 received from each qualified elector by the election officer or  
7 election director.

8           B. No later than thirty days prior to the date of a  
9 conservancy district election, the election officer or election  
10 director shall mail a set of election materials to each  
11 qualified elector.

12           C. The qualified elector list is a public record  
13 open to public inspection in the election officer's or election  
14 director's office during regular office hours."

15           SECTION 9. A new Section 73-14-29.2 NMSA 1978 is enacted  
16 to read:

17           "73-14-29.2. [NEW MATERIAL] MAILED BALLOTS--MANNER OF  
18 VOTING.--A qualified elector voting in a conservancy district  
19 election shall secretly mark the ballot, place it in the  
20 official inner envelope and securely seal the envelope. The  
21 elector shall then:

22                   A. place the official inner envelope inside the  
23 official mailing envelope and securely seal the envelope; and

24                   B. complete the form on the reverse of the official  
25 mailing envelope, which shall include an affirmation by the

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1 elector under penalty of perjury that the facts stated in the  
2 form are true."

3 SECTION 10. A new Section 73-14-29.3 NMSA 1978 is enacted  
4 to read:

5 "73-14-29.3. [NEW MATERIAL] MAILED BALLOTS--RECEIPT OF  
6 BALLOTS BY ELECTION OFFICER OR ELECTION DIRECTOR.--

7 A. The election officer or election director shall:

8 (1) mark on each completed official mailing  
9 envelope the date and time of receipt;

10 (2) record this information in the qualified  
11 elector list; and

12 (3) safely keep the official mailing envelope  
13 unopened in a locked and sealed ballot box until it is  
14 transmitted to the election judges on election day or until it  
15 is canceled and destroyed in accordance with law.

16 B. The election officer or election director shall  
17 accept completed official mailing envelopes until 7:00 p.m. on  
18 election day. A completed official mailing envelope received  
19 after that time shall not be opened but shall be preserved by  
20 the election officer or election director until the time for  
21 election contests has expired. In the absence of a restraining  
22 order after expiration of the time for election contests, the  
23 election officer or election director shall destroy all late  
24 official mailing envelopes without opening them or permitting  
25 the contents to be examined, cast, counted or canvassed.

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1           C. At 5:00 p.m. on the Monday immediately preceding  
2 the date of election, the election officer or election director  
3 shall record the numbers on the unused ballots and shall  
4 publicly destroy all such unused ballots. The election officer  
5 or election director shall execute and maintain a certificate  
6 of destruction, which shall include the numbers on the ballots  
7 destroyed."

8           SECTION 11. A new Section 73-14-29.4 NMSA 1978 is enacted  
9 to read:

10           "73-14-29.4. [NEW MATERIAL] HANDLING OF BALLOTS BY  
11 ELECTION JUDGES.--

12           A. Before opening an official mailing envelope, the  
13 election judges shall determine that the required information  
14 has been completed on its reverse.

15           B. If the qualified elector's signature is missing,  
16 the presiding judge shall write "Rejected" on the front of the  
17 official mailing envelope. The election officer or election  
18 director shall enter the qualified elector's name in the  
19 signature rosters and shall write the notation "Rejected -  
20 Missing Signature" in the "Notations" column of the signature  
21 rosters. The presiding judge shall place the official mailing  
22 envelope unopened in an envelope provided for rejected ballots,  
23 seal the envelope and write the qualified elector's name on the  
24 front of the envelope and deposit it in the locked ballot box.

25           C. An accredited challenger may examine the

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1 official mailing envelope and may challenge the ballot of any  
2 qualified elector because the official mailing envelope has  
3 been opened prior to being received by the election judges.  
4 Upon the challenge of a ballot, the election judges shall  
5 follow the same procedure as when ballots are challenged  
6 pursuant to the Election Code when a person attempts to vote in  
7 person. If a challenge is upheld, the official mailing  
8 envelope shall not be opened but shall be placed in an envelope  
9 provided for challenged ballots. The same procedure shall be  
10 followed in canvassing and determining the validity of  
11 challenged ballots pursuant to this section as with other  
12 challenged ballots.

13 D. If the official mailing envelopes have been  
14 properly subscribed and the qualified electors have not been  
15 challenged:

16 (1) the election judges shall open the  
17 official mailing envelopes and deposit the ballots in their  
18 still-sealed official inner envelopes in the locked ballot box;  
19 and

20 (2) the election officer or election director  
21 shall enter the voter's name and residence address as shown on  
22 the official mailing envelope in the signature rosters.

23 E. Prior to 7:00 p.m. on the day of the election,  
24 the election judges may either remove the ballots from the  
25 official inner envelopes and count and tally the results or

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1 count and tally the ballots on an electronic voting machine the  
2 same as if the qualified elector had voted in person. It is  
3 unlawful for any person to disclose the results of a count and  
4 tally or the registration on a voting machine of ballots prior  
5 to 7:00 p.m. on the day of the election."

6 SECTION 12. A new Section 73-14-29.5 NMSA 1978 is enacted  
7 to read:

8 "73-14-29.5. [NEW MATERIAL] CANVASS--RECOUNT OR RECHECK--  
9 DISPOSITION.--If electronic voting machines are not used to  
10 register the mailed ballots, the ballots shall be canvassed,  
11 recounted and disposed of in the manner provided by the  
12 Election Code for the canvassing, recounting and disposition of  
13 paper ballots. If voting machines are used to register the  
14 ballots, the ballots shall be canvassed and rechecked in the  
15 manner provided by the Election Code for the canvassing and  
16 recheck of ballots cast on a voting machine; provided that, in  
17 the event of a contest, voting machines used to register the  
18 ballots shall not be rechecked, but the ballots shall be  
19 recounted in the manner provided by the Election Code for the  
20 recounting of paper ballots. A contest shall be conducted  
21 pursuant to the contest provisions of the Election Code."

22 SECTION 13. A new Section 73-14-29.6 NMSA 1978 is enacted  
23 to read:

24 "73-14-29.6. [NEW MATERIAL] VOTING WHEN NO MAILED BALLOT  
25 RECEIVED.--

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1           A. Except as provided in this section, no person  
2 shall vote in person in a conservancy district election subject  
3 to the provisions of Sections 73-14-18 through 73-14-30 NMSA  
4 1978.

5           B. At any time prior to 5:00 p.m. on the Monday  
6 immediately preceding the date of the election, a qualified  
7 elector who has not received a mailed ballot may execute, in  
8 the office of the conservancy district, a sworn affidavit  
9 stating that the elector did not receive the ballot. Upon  
10 receipt of the sworn affidavit, the election officer or  
11 election director shall issue the qualified elector a  
12 replacement ballot.

13           C. The election officer or election director, no  
14 later than forty-eight hours after the close of the election,  
15 shall remove the outer envelopes of the replacement ballots  
16 and, without removing or opening the inner envelopes, determine  
17 if a mailed ballot from a qualified elector was received by  
18 7:00 p.m. on election day. If the election officer or election  
19 director determines that a mailed ballot was not received from  
20 that qualified elector, the election officer or election  
21 director shall remove the inner envelope without opening it,  
22 retain the outer envelope with the other election returns and  
23 place the inner unopened envelope in a secure container to be  
24 transmitted to the election judges to be tallied and included  
25 in the election results.

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1           D. The election officer or election director shall  
2 prescribe and furnish the affidavits, replacement ballots and  
3 necessary envelopes for purposes of this section."

4           SECTION 14. A new section 73-14-29.7 NMSA 1978 is enacted  
5 to read:

6           "73-14-29.7. [NEW MATERIAL] ELECTIONS--RETURNS--CANVASS--  
7 CERTIFICATES.--

8           A. The presiding election judge of the district  
9 shall, not more than six hours after the polls have closed,  
10 deliver to the election directors a certified copy of the  
11 certificate of returns. Not more than twenty-four hours after  
12 the polls have closed, the election directors shall deliver a  
13 certified copy of the certificate of returns to the board of  
14 directors.

15           B. On the morning of the first Friday following the  
16 election, the board of directors shall meet and canvass the  
17 returns certified to it by the election directors.

18           C. After canvassing the returns, the board shall  
19 issue election certificates to the candidate or candidates  
20 receiving the highest number of votes for each position on the  
21 ballot. The board shall declare the results of the election in  
22 writing and forward a copy of the declaration to the secretary  
23 of state and to the state engineer."

24           SECTION 15. Section 73-14-30 NMSA 1978 (being Laws 1975,  
25 Chapter 262, Section 13) is amended to read:

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1 "73-14-30. ELECTION EXPENSES.--The conservancy district  
2 board shall pay out of the district's treasury to the  
3 appropriate county those sums necessary to meet the actual  
4 expenses of district elections incurred by the county. The  
5 board may levy a tax or assessment sufficient to meet election  
6 expenses on all property that is subject to direct assessment  
7 or taxation within the district."

8 SECTION 16. REPEAL.--Sections 73-14-31 through 73-14-31.3  
9 and 73-14-85.1 NMSA 1978 (being Laws 1975, Chapter 262, Section  
10 14, Laws 1996, Chapter 42, Sections 15 and 16, Laws 1999,  
11 Chapter 168, Section 8 and Laws 1996, Chapter 42, Section 17,  
12 as amended) are repealed.

13 SECTION 17. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2011.

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