

1 SENATE BILL 286

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CONGRESSIONAL VACANCY ELECTIONS; PROVIDING
12 TEMPORARY EMERGENCY PROCEDURES FOR THE CONDUCT OF CONGRESSIONAL
13 SPECIAL ELECTIONS HELD DURING THE CORONAVIRUS DISEASE 2019
14 PANDEMIC IN 2021; PROVIDING A DELAYED REPEAL; DECLARING AN
15 EMERGENCY.

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

18 SECTION 1. A temporary provision of the Election Code is
19 enacted to read:

20 "TEMPORARY PROVISION--CONDUCT OF ELECTION--2021 SPECIAL
21 CONGRESSIONAL ELECTION--SPECIAL PROVISIONS AND CONTINGENCIES.--

22 A. This section regulates the conduct of any
23 election held in 2021 to fill a vacancy in the office of United
24 States representative. To the greatest extent possible, the
25 provisions of this section are to be read as supplemental to

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1 and in harmony with the provisions of the Election Code;
2 provided, however, that if a direct conflict exists with other
3 provisions in the Election Code, the provisions of this section
4 shall apply.

5 B. Each election day polling location located in
6 the district established in the 2019 polling place resolution
7 for each county or a location in the district established by
8 any subsequent amendment to such a resolution shall operate as
9 a voter convenience center; provided that the secretary of
10 state may authorize an election day polling location that is
11 not located on Indian nation, tribal or pueblo land to operate
12 as a mail ballot election precinct if:

13 (1) the county clerk has requested a written
14 waiver from the requirements of this subsection at least
15 forty-five days before the election; and

16 (2) the request is for a specific election day
17 polling location that is unable to meet the data connectivity
18 requirements for voter convenience centers or is located in a
19 remote area of a county.

20 C. A polling place located on Indian nation, tribal
21 or pueblo land shall not be closed or consolidated with other
22 polling locations, nor shall the days and times of voting be
23 modified, without the written agreement of the Indian nation,
24 tribe or pueblo where the polling location is located. If, as
25 a result of public health concerns, voters registered within

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1 the Indian nation, tribe or pueblo are unable to leave the
2 Indian nation, tribe or pueblo during the time when voting
3 occurs for the election, regardless of whether voters residing
4 outside the boundaries of the Indian nation, tribe or pueblo
5 are able to access such polling locations, there shall be at
6 least one polling location within the boundaries of the Indian
7 nation, tribe or pueblo.

8 D. On behalf of each county clerk, the secretary of
9 state shall automatically deliver to each mailable voter in the
10 district a notice informing the voter of the date of the
11 election, an internet web address where a voter may request a
12 mailed ballot, a telephone number where a voter may call to
13 request a paper mailed ballot application and a list of the
14 days and times and addresses where voters may vote in person.
15 The notice shall be mailed beginning on the fiftieth day before
16 the election. As used in this subsection, a "mailable voter"
17 is a voter in the district other than a voter:

18 (1) to whom a notice was sent pursuant to
19 Subsection C of Section 1-4-28 NMSA 1978 in 2018 or 2020, and
20 subsequent to the sending of the most recent notice:

21 (a) did not return the prepaid and
22 pre-addressed return card provided pursuant to that section;

23 (b) has not filed a new or amended
24 certificate of registration with a new address at which
25 election-related mail is to be sent; and

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1 (c) has not since voted;

2 (2) who registered to vote on or before
3 December 31, 2016, has not submitted a new certificate of
4 registration at any time since January 1, 2017 and has not
5 voted in any election since January 1, 2017; or

6 (3) whose ballot is delivered pursuant to the
7 provisions of the Uniform Military and Overseas Voters Act or
8 the Intimate Partner Violence Survivor Suffrage Act.

9 E. Each mailed ballot sent to a voter in the
10 election shall contain the following notice: "This ballot may
11 be returned to the office of the county clerk or any open
12 polling location in the county where you are registered to vote
13 at any time up to and including the day of the election. If
14 this ballot is returned by mail, to ensure timely postal
15 delivery to the county clerk, the ballot should be mailed no
16 later than _____.". The date used in the notice shall be
17 seven days prior to the election.

18 F. An application for a mailed ballot from a voter
19 who is not a federal qualified elector is timely if received by
20 the county clerk no later than fourteen days prior to the
21 election. An application for a mailed ballot from a voter who
22 is not a federal qualified elector that is received by the
23 county clerk after the fourteenth day prior to the election
24 shall be rejected, and if the application was received by the
25 county clerk by the fourth day prior to the election, the

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1 county clerk shall within twenty-four hours of receipt of the
2 application send a rejection notice to the voter that shall
3 include a list of the early and election day polling locations
4 in the county. The county clerk shall only accept applications
5 for a mailed ballot submitted through the official web portal
6 operated by the secretary of state or submitted on the official
7 paper form sent to a voter by the county clerk, and shall
8 process only the first request submitted by the voter. A
9 request for a replacement ballot is not subject to the
10 deadlines in this subsection.

11 G. If the application for a mailed ballot from a
12 voter who is not a federal qualified elector indicates that the
13 mailed ballot is to be delivered to an address other than an
14 address listed on the voter's certificate of registration, the
15 county clerk shall prepare a notice of requested mailed ballot.
16 The notice of requested mailed ballot shall inform the voter of
17 the address to which the ballot was mailed along with the phone
18 number of the county clerk's office and the internet address of
19 the voter web portal provided by the secretary of state. The
20 notice of requested mailed ballot shall be delivered to the
21 address provided on the voter's certificate of registration on
22 the same day the county clerk delivers the mailed ballot to the
23 address requested by the voter.

24 H. An application for a mailed ballot from a voter
25 who is a federal qualified elector is timely if received by the

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1 county clerk no later than seven days prior to the election;
2 provided that the voter provides information permitting secured
3 electronic delivery of the ballot to the voter. An application
4 for a mailed ballot from a voter who is a federal qualified
5 elector who does not provide information permitting secured
6 electronic delivery of the ballot is timely if received by the
7 county clerk no later than fourteen days prior to the election.

8 I. To return a mailed ballot, each voter shall
9 provide in the space provided for that purpose under the
10 privacy flap of the official mailing envelope the voter's
11 signature on a line located under the required attestation and
12 the last four digits of the voter's social security number,
13 which shall constitute the required voter identification. The
14 attestation shall include the pre-printed name of the voter to
15 whom the mailed ballot was sent. No additional information
16 shall be required of a voter to return a mailed ballot.

17 J. Upon receipt of a mailed ballot, the county
18 clerk shall remove the privacy flap to verify that the voter
19 signed the official mailing envelope and confirm that the last
20 four digits of the social security number provided by the voter
21 matches the information available to the county clerk. If the
22 signature is present and the last four digits of the voter's
23 social security number match, the county clerk shall note in
24 the absentee ballot register that the ballot was accepted and
25 shall transfer the ballot to the special deputy for mailed

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1 ballots for delivery to the absent voter election board. If
2 either the voter's signature is missing or the last four digits
3 of the voter's social security number are not provided or do
4 not match, the county clerk shall reject the mailed ballot and
5 make the appropriate notation in the absentee ballot register
6 and shall transfer the ballot to the special deputy for mailed
7 ballots for delivery to the absent voter election board. If
8 the mailed ballot is rejected, the county clerk shall within
9 one day send the voter a notice of rejection, along with
10 information regarding how the voter may cure the reason for the
11 rejection. The determination of the county clerk to accept or
12 reject a mailed ballot is subject to a later interposition of a
13 challenge before the absent voter election board. In addition
14 to existing procedures in the Election Code for qualifying a
15 previously rejected absentee ballot after election day, a
16 previously rejected absentee ballot may be qualified by the
17 presiding judge and election judges of the absent voter
18 election board before the day of the election if the ballot was
19 rejected for the lack of a signature or missing required voter
20 identification if the voter provides such information pursuant
21 to procedures established by the secretary of state.

22 K. A political party with a candidate on the ballot
23 may appoint a challenger to observe the determination made by
24 the county clerk to accept or reject a mailed ballot. The
25 challenger shall not interpose a challenge to the county clerk,

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1 but may make notes to interpose a challenge to the absent voter
2 election board; provided that a challenger shall not copy,
3 record or transcribe any portion of a voter's social security
4 number. Challengers are subject to the same public health
5 requirements as county clerk staff and election board members.

6 L. On election night, the absent voter election
7 board shall recess upon the earlier of completion of its work
8 or 11:00 p.m. An absent voter election board that recesses at
9 11:00 p.m. shall continue its work only between the hours of
10 9:30 a.m. and 8:00 p.m. on each subsequent day until the board
11 has completed its work.

12 M. When preparing the county canvass report, each
13 county clerk shall appoint an election board to conduct a
14 machine tabulation or hand tally if the county clerk has
15 received and logged any:

- 16 (1) paper ballots not previously tabulated;
17 (2) mailed ballots delivered to an election
18 board not previously tabulated;
19 (3) provisional paper ballots that have been
20 qualified and contain votes that are to be counted; or
21 (4) ballots with write-in votes not previously
22 counted.

23 N. Certificates of registration and cancellations
24 of existing voter registrations not processed until after the
25 election pursuant to existing law may be processed by the

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1 county clerk beginning the first Monday following the election;
2 provided that such certificates of registration and
3 cancellations of existing voter registrations shall be
4 processed beginning the first business day following approval
5 of the report of the county canvass by the county canvassing
6 board.

7 O. No later than fifty days before the election and
8 in consultation with the department of health, the secretary of
9 state shall procure sufficient personal protective equipment
10 and sanitizing supplies for distribution to each county clerk
11 and for each early, mobile and election day polling location.

12 P. Nothing in this section shall alter or modify
13 the time lines or procedures provided in the Uniform Military
14 and Overseas Voters Act except for the deadlines provided in
15 this section for the request of a military-overseas ballot by a
16 voter who is a federal qualified elector. Nothing in this
17 section shall alter or modify the time lines or procedures
18 provided in the Intimate Partner Violence Survivor Suffrage
19 Act.

20 Q. The secretary of state shall deposit sufficient
21 funds in the business reply mail account for each county clerk
22 to ensure delivery of all mailed ballot applications and
23 returned mailed ballots.

24 R. Notwithstanding any limitations to the contrary,
25 the state board of finance shall authorize sufficient funds to

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1 be timely distributed to the secretary of state and the
2 department of health for necessary and reasonable expenses
3 incurred pursuant to this section.

4 S. The compiler shall not compile this section, but
5 shall reference it in a compiler's note."

6 SECTION 2. DELAYED REPEAL.--Section 1 of this act is
7 repealed effective December 31, 2021.

8 SECTION 3. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.