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SENATE BILL 38

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Bill B. O'Neill and Natalie Figueroa

AN ACT

RELATING TO PRIMARY ELECTIONS; ALLOWING VOTERS WHO HAVE NOT DESIGNATED A MAJOR POLITICAL PARTY AFFILIATION ON THEIR CERTIFICATES OF REGISTRATION TO PARTICIPATE IN THE PRIMARY ELECTION PROCESS BY CHOOSING TO AFFILIATE WITH A MAJOR POLITICAL PARTY PARTICIPATING IN A PRIMARY BY REQUESTING THE PARTY'S BALLOT; MAKING CONFORMING CHANGES.

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

SECTION 1. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the change of party affiliation.

B. A voter who has previously declined to designate

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1 a party affiliation on the voter's certificate of registration
2 but who desires to designate a party affiliation on the voter's
3 certificate of registration shall execute a new certificate of
4 registration indicating the desired party affiliation.

5 C. A voter who does not designate on the
6 certificate of registration a party affiliation shall be
7 considered to have declined to designate a party affiliation.

8 D. A voter who has declined to designate on the
9 voter's certificate of registration a party affiliation, or who
10 designated affiliation with a party other than a major
11 political party on the voter's certificate of registration, but
12 who chooses to affiliate with a major political party that is
13 participating in a primary election may do so by requesting the
14 ballot of one of the parties participating in that primary
15 election. The voter's certificate of registration shall not be
16 changed to reflect a new or different party affiliation unless
17 the voter so requests in accordance with the provisions of
18 Subsection B of this section."

19 SECTION 2. Section 1-6-4 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 130, as amended) is amended to read:

21 "1-6-4. MAILED BALLOT APPLICATION.--

22 A. In a statewide election, application by a voter
23 for a mailed ballot shall be made only on the official form
24 approved by the secretary of state or its online equivalent
25 accessed through a website authorized by the secretary of

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1 state. The form shall identify the applicant and contain
2 information to establish the applicant's qualification for
3 issuance of a mailed ballot under the Absent Voter Act;
4 provided that a voter who has declined to designate a party
5 affiliation on the voter's certificate of registration, or who
6 designated affiliation with a party other than a major
7 political party on the voter's certificate of registration, but
8 who chooses to affiliate with a major political party
9 participating in a primary election shall be provided the
10 option on the application form for a mailed ballot in a primary
11 election to request the ballot of one of the parties
12 participating in the primary election.

13 B. Each application on a paper form for a mailed
14 ballot shall be signed by the applicant and shall require the
15 applicant's printed name, registration address and year of
16 birth. When submitted by the voter, the county clerk shall
17 accept an application for a mailed ballot pursuant to this
18 subsection regardless of whether the application for a mailed
19 ballot is delivered to the county clerk on paper or by
20 electronic means. When submitted by a third party, the county
21 clerk shall not accept an application for a mailed ballot
22 pursuant to this subsection if the application for a mailed
23 ballot is delivered by electronic means.

24 C. The secretary of state shall allow a voter to
25 submit an online application for a mailed ballot through a

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1 website authorized by the secretary of state; provided that the
2 voter shall have a current or expired New Mexico driver's
3 license or state identification card issued by the motor
4 vehicle division of the taxation and revenue department. An
5 online request for a mailed ballot shall contain all of the
6 information that is required for a paper form. The voter shall
7 also provide the person's full New Mexico driver's license
8 number or state identification card number.

9 D. When a voter requests a mailed ballot pursuant
10 to this section, the voter shall mark the box associated with
11 the following statement, which shall be included as part of the
12 online mailed ballot request form:

13 "By clicking the boxes below, I swear or affirm all of the
14 following:

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

18 [] All of the information that I have provided on
19 this form is true and correct as of the date I am submitting
20 this form."

21 E. Online applications for mailed ballots shall
22 retain the dates of submission by the qualified elector and of
23 acceptance by the county clerk. For purposes of deadlines
24 contained in the Election Code, the time and date of the
25 submission by the voter shall be considered the time and date

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1 when the application for a mailed ballot is received by the
2 county clerk.

3 F. New registrants who registered for the first
4 time in this state by mail and at that time did not provide
5 acceptable documentary identification as required by federal
6 law shall be informed of the need to comply with federal
7 identification requirements when returning the requested ballot
8 and notified that if the registrant votes for the first time in
9 New Mexico by mail and does not follow the instructions for
10 returning the required documentary identification, the
11 registrant waives the right to secrecy in that mailed ballot.
12 The secretary of state shall issue rules to exempt voters from
13 submitting identification only as required by federal law and
14 shall review and, if necessary, update these rules no later
15 than March 15 of even-numbered years.

16 G. A person who willfully and with knowledge and
17 intent to deceive or mislead any voter, election board,
18 canvassing board, county clerk or other election official and
19 who falsifies any information on an absentee ballot request
20 form or who affixes a signature or mark other than the person's
21 own on a mailed ballot request form is guilty of a fourth
22 degree felony."

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

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

3 A. Notwithstanding the provisions of Sections
4 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in
5 November of each odd-numbered year, a board of county
6 commissioners may designate a precinct as a mail ballot
7 election precinct if, upon a written request of the county
8 clerk, it finds that the precinct has fewer than one hundred
9 voters and the nearest polling place for an adjoining precinct
10 is more than twenty miles driving distance from the boundary
11 for the precinct in question.

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

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1 before election day and in the office of the county clerk on
2 election day in case the voter prefers to vote in person and
3 not by mail. In addition, the notice shall inform the voter of
4 the ability of the voter to cast a ballot at any voter
5 convenience center on election day if the voter chooses not to
6 receive an absentee ballot, or to cast a replacement ballot at
7 any early voting location or voter convenience center if the
8 voter does not receive an absentee ballot, which will be
9 counted upon confirmation that the voter has not returned the
10 absentee ballot. The notice shall also contain the information
11 required in the voter notification sent by the secretary of
12 state on behalf of each county clerk in advance of a statewide
13 election pursuant to Section 1-11-4.1 NMSA 1978.

14 C. For a primary election, the notice sent to a
15 voter who has not designated a party affiliation on the voter's
16 certificate of registration, or who designated affiliation with
17 a party other than a major political party on the voter's
18 certificate of registration, shall inform such a voter that the
19 voter may choose to affiliate with a major political party
20 participating in the primary election by returning the card and
21 indicating which major political party's ballot the voter
22 requests for that primary election or by logging on to a
23 website hosted by the secretary of state to indicate which
24 major political party's ballot the voter requests for that
25 primary election.

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1 ~~[G.]~~ D. The county clerk shall mail each voter in
2 the mail ballot election precinct an absentee ballot on the
3 twenty-eighth day before an election, unless the voter has
4 requested otherwise or does not return the card required by
5 Subsection C of this section indicating which party ballot the
6 voter chooses for that election, along with a notice that there
7 will be no polling place in that precinct on election day."

8 SECTION 4. Section 1-12-7 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 246, as amended) is amended to read:

10 "1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
11 VOTE--PERSONS PERMITTED TO VOTE UPON CHOOSING TO AFFILIATE WITH
12 A PARTY.--

13 A. A person shall not vote in a primary, general or
14 statewide special election unless ~~[he]~~ the person is a voter of
15 the county in which ~~[he]~~ the person offers to vote. A valid
16 original certificate of registration in the county register is
17 prima facie evidence of being a voter in the precinct.

18 ~~[B. A person whose major party affiliation is not~~
19 ~~designated on his original certificate of registration shall~~
20 ~~not vote in a primary election.~~

21 ~~G.]~~ B. A person at a primary election shall not be
22 permitted to vote for the candidate of any party other than the
23 party designated on ~~[his]~~ the person's current certificate of
24 registration; provided that a person who has declined to
25 designate a political party affiliation on the person's

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1 certificate of registration, or who designated affiliation with
2 a party other than a major political party on the voter's
3 certificate of registration, shall be permitted to choose to
4 affiliate with a major political party in a primary election by
5 requesting a major political party's primary election ballot
6 and shall be permitted to vote for the candidates on that
7 party's ballot."

8 SECTION 5. Section 1-12-7.1 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 112, as amended) is amended to read:

10 "1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF
11 VOTERS--USE DURING ELECTION.--

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

20 B. At each polling location where physical rosters
21 are used, the presiding judge of the precinct board shall
22 assign one judge or election clerk of the board to be in charge
23 of one copy of the checklist of voters, which shall be used to
24 confirm the registration and voting of each person offering to
25 vote.

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1 C. The presiding judge of the precinct board shall
2 assign one judge or election clerk to be in charge of the
3 signature roster.

4 D. The judge or election clerk assigned to confirm
5 registration shall determine that each person offering to vote
6 is registered and, in the case of a primary election, that the
7 voter is either currently registered in a party designated on
8 the primary election ballot or has declined to designate a
9 party affiliation on the voter's certificate of registration or
10 designated affiliation with a party other than a major
11 political party on the voter's certificate of registration, and
12 chooses to affiliate with a major political party for that
13 primary election by requesting a ballot of a party designated
14 on the primary election ballot. If the person's registration
15 is confirmed and the voter provides the required voter
16 identification, the judge or election clerk shall announce to
17 the judges or election clerks the list number and the name of
18 the voter as shown on the checklist of voters. If the voter
19 does not provide the required voter identification, the voter
20 shall be allowed to vote on a provisional paper ballot and
21 shall provide the required voter identification to the county
22 clerk's office before 5:00 p.m. on the second day following the
23 election, or to the precinct board before the polls close, or
24 the voter's provisional ballot shall not be qualified. If the
25 required voter identification is provided, the voter's

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1 provisional paper ballot shall be qualified and the voter shall
2 not vote on any 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 6. 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 unless the voter's certificate of registration
23 shows that the voter has declined to designate a party
24 affiliation or that the voter designated affiliation with a
25 party other than a major political party, and the voter chooses

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1 to affiliate with a major political party for that primary
2 election by requesting the ballot of a party participating in
3 the primary. Upon making that determination, the county clerk
4 shall transmit the ballot to the county canvassing board to be
5 tallied and included in the canvass of that county for the
6 appropriate precinct."

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

9 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A
10 challenge may be interposed by a member of the precinct board
11 or by a party challenger for the following reasons:

12 A. the person offering to vote is not registered to
13 vote;

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

16 C. the person offering to vote has already cast a
17 ballot in that election;

18 D. the person offering to vote is improperly
19 registered because the person is not a qualified elector; or

20 E. in the case of a primary election, the person
21 desiring to vote [~~is not affiliated with a~~] has designated on
22 the voter's certificate of registration an affiliation with a
23 major political party represented on the ballot, but the person
24 requests a ballot for a party with which the person is not
25 affiliated."

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