

Election Statute Navigator: New Mexico

The Election Law Program prepared this Election Law Navigator to highlight state election statutes particularly relevant to the 2020 cycle. The Election Law Navigator is updated as of March 1, 2021. Please contact elect@wm.edu with questions or suggestions. To access COVID-specific legal information impacting this state's election process, please use this link: <https://ebenchmark.org/new-mexico/covid/#tracker>.

Voter Registration

- Voter permitted to register up to and including Election Day (aka Same Day Registration) – [§ 1-4-5.7\(D\)](#)
 - Beginning January 1, 2021 and upon the approval of the voting system certification committee, during a statewide election, a qualified elector may register to vote or update an existing certificate of registration at an election day voting location; provided that the secretary of state shall establish procedures to ensure that a registration officer has an opportunity to review the information of a qualified elector who registers to vote or updates an existing certificate of registration immediately before the qualified elector votes on election day.
- Voters (other than above) register prior to Election Day – [§ 1-4-8](#)
- Online registration available – [§ 1-4-2](#)
 - [See official New Mexico registration website](#)
 - See SB 643, 2015
- Registration via mail available – [§ 1-4-2\(A\)](#), [§ 1-4-5.1](#)
- In-Person registration available – [§ 1-4-2\(A\)](#), [§ 1-4-5.2](#)
- Automatic Voter Registration – [§ 1-4-2\(A\)](#), [§ 1-4-5.8](#)
- Preregistration allowed – [§ 1-4-2\(B\)](#); [§ 1-4-2\(C\)](#)
- Residency requirement – [§ 1-1-7](#)
- Prior conviction eligibility – [§ 1-4-27.1](#)
- Voter list maintenance guidelines
 - [§ 1-4-1.1](#) – Authorization to verify voter registration information; investigation and reconciliation
 - [§ 1-5-5](#) – Entry of data into data processing system; county register; maintenance
 - [§ 1-5-14](#) – File maintenance reports; voter file updates
- Other:
 - [§ 1-4-5.3](#) – Registration; lack of physical address
 - [§ 1-4-7](#) – Registration by temporary absentee
 - A qualified elector who is temporarily out of his county of residence or out of New Mexico, may, upon request to the county clerk of his county of residence, obtain the prescribed certificate of registration form.

State Absentee, Early, and Mail Voting

- Early voting
 - [§ 1-6-5.6](#) – Early voting procedures
 - [§ 1-6-5.7\(A\)](#) – Commencing on the twenty-eighth day preceding the election during the regular hours and days of business at the county clerk’s office and from 10 –00 a.m. to 6 –00 p.m. on the Saturday immediately prior to the date of the election, early voting shall be conducted in each office of the county clerk
 - [§ 1-6-5.7\(B\)](#) – Commencing on the third Saturday prior to a statewide election and ending on the Saturday immediately prior to the date of the election, an early voter may vote in person on a voting system at alternate voting locations that may be established by the county clerk
 - [§ 1-6-5.7\(C\)](#) – Each early voting location shall comply with the following provisions, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived
- No-excuse absentee voting – [§ 1-6-3](#)
- Online absentee ballot application available – [§ 1-6-4](#)
- Absentee ballot application is verified – [§ 1-6-5](#)
- Absentee ballot verification details – [§ 1-6-14](#)
- Someone other than the voter can return an absentee or mail ballot on behalf of the voter– [§ 1-6-10.1](#)
 - A voter, caregiver to that voter or member of that voter’s immediate family may deliver that voter’s absentee ballot to the county clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.
- Deadline by which election official must receive absentee/mailed applications
 - [§ 1-6-4.3\(A\)](#) – A person or organization that is not part of a government agency and that collects applications for mailed ballots shall submit the applications to the appropriate office for filing within forty-eight hours of their completion or the next business day if the appropriate office is closed for that forty-eight-hour period.
 - [§ 1-6-5\(F\)](#) – A mailed ballot shall be requested not later than the Thursday immediately prior to the date of the election and shall be sent to the voter not later than the Friday immediately prior to the date of the election.
- Deadline by which election official must receive absentee/mailed ballots – [§ 1-6-10\(C\)](#)
 - Completed official mailing envelopes shall be accepted until 7 –00 p.m. on election day
- Absentee/Mail ballot processing and counting procedures – [§ 1-6-14](#)
- Spoiling/Replacement/Correction ballot restrictions
 - [§ 1-6-16](#) and – [§ 1-6-16.1\(B\)](#) – Replacement paper ballots
 - [§ 1-12-62](#) – Paper ballots; spoiled or defaced
 - [§ 1-24-3\(E\)](#) – Special election procedures; replacement and provisional ballots
- Other –
 - [§ 1-6-5.8](#) – A county clerk shall provide at least one alternate voting or mobile alternate voting location on Indian nation, tribal or pueblo land when requested by the Indian nation, tribe or pueblo in the county

- [§ 1-6-8\(A\)\(2\)](#) – official mailing envelopes for use in returning the official inner envelope to the county clerk, which shall be postage-paid; provided that only the official mailing envelope for absentee ballots in a political party primary shall contain a designation of party affiliation
- [§ 1-6-9\(B\)](#) – The official mailing envelope may be returned by mail using the United States postal service. The secretary of state shall implement a free-access tracking system for each voter to be able to see the status of the voter’s mailed ballot while en route to the voter as well as when returned to the county clerk.
- [§ 1-6-22.1](#) – Notwithstanding the provisions of Sections [§ 1-1-11](#) and – [§ 1-1-12](#) NMSA 1978, not later than the first Monday in November of each odd-numbered year, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than twenty miles driving distance from the boundary for the precinct in question.
- [§ 1-24-3\(A\)](#) – All special elections in this state shall be conducted absentee. Mailed ballots shall be used exclusively for voting in special elections.

In-Person Voter ID

- No document required to vote – [§ 1-1-24](#)
- Other –
 - [§ 1-4-5.7\(G\)\(2\)](#) – any document that contains an address in the county together with a photo identification card
 - [§ 1-6-4\(F\)](#) – New registrants who registered for the first time in this state by mail and at that time did not provide acceptable documentary identification as required by federal law shall be informed of the need to comply with federal identification requirements when returning the requested ballot. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.
 - [§ 1-22-3.1\(C\)](#) – A home rule municipality that pursuant to its charter is implementing a form of required voter identification that supersedes the provisions of [§ 1-1-24](#) NMSA 1978 shall not elect its municipal officers at the regular local election.

Provisional Voting

- Provisional ballot availability
 - [§ 1-4-5.7\(H\)](#) – If an early voting site or polling place does not have real-time access to the statewide electronic voter file, a voter desiring to update an existing certificate of registration or to register to vote shall be issued a provisional ballot.
 - [§ 1-4-11\(E\)](#) – If the county clerk rejects a certificate of registration because required information is not provided on the certificate or cannot ascertain the qualified elector’s social security number, the county clerk shall indicate this on the qualified elector’s certificate of registration and shall make the appropriate notation in the voter file, indicating that the voter may only vote on a provisional ballot. The provisional ballot

shall be counted once the required information is provided or the voter's social security number is ascertained.

- [§ 1-6-5.7\(A\)\(1\)](#) – when marking a ballot in person at the county clerk's office, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot.
- [§ 1-6-5.7\(D\)](#) – When voting at an early voting location, the voter shall provide the required voter identification to the election board, county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot.
- [§ 1-6-16.2\(A\)](#) – After the close of the period for requesting a mailed ballot, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in the voter's confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote in person may request in writing that a provisional paper ballot be made available to the voter.
- [§ 1-6-22.1\(B\)](#) – If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to [§ 1-3-8](#) NMSA 1978, the notice shall inform the voter if the county is consolidating precincts on election day and, if so, the ability of the voter to cast a ballot at any consolidated precinct on election day if the voter chooses not to receive an absentee ballot, or to cast a provisional ballot at any consolidated precinct if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot.
- [§ 1-12-7.1\(D\)](#) – If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk's office before 5 –00 p.m. on the second day following the election
- [§ 1-12-7.1\(F\)](#) – If the signature roster indicates that the voter is required to present a physical form of identification before voting, the judge or election clerk shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional paper ballot, that ballot shall be qualified.
- Time allotted to determine the status of provisional ballot
 - See [N.M.A.C. 1.10.22](#)
- Provisional ballot rejection reasons –
 - See [N.M.A.C. 1.10.22](#)
- Method for informing voters whether provisional vote was counted
 - [See official New Mexico Provisional Ballot Search](#)

Polling Place

- Polling Place availability and requirements
 - [§ 1-3-1](#) – Nature of precincts

- [§ 1-3-2](#) – Precincts; duties of county commissioners
- [§ 1-3-4](#) – Consolidation of precincts; voter convenience centers
- [§ 1-3-5](#) – Precincts; powers of county commissioners
- [§ 1-3-6](#) – Precincts; boundaries; protest
- [§ 1-3-7](#) – Polling places
- [§ 1-3-7.1](#) – Additional polling places
- [§ 1-3-8](#) – Precinct changes; notice and publication
- [§ 1-3-12](#) – Adjusting precinct boundaries
- [§ 1-3-18](#) – Polling places; building requirements; inspection
- [§ 1-3-19](#) – Election-day polling places; adequate resources
- Electioneering or campaigning must not be closer than 100 feet to the entrance of the polling place – [§ 1-20-16](#)
- Poll observers
 - [§ 1-1-3.2](#) – a person registered with the United States department of state as an international election observer or a person registered with the New Mexico secretary of state who is an academic engaged in research on elections and the election process.
 - [§ 1-2-22](#) – Qualifications and restrictions
 - [§ 1-2-25](#) – County canvass observers; permitted and prohibited activities
 - [§ 1-2-29](#) – Election observers; permissible activities
 - [§ 1-2-30](#) – Election observers; penalty
 - [§ 1-2-31](#) – County canvass observers
 - [§ 1-2-32](#) – State canvass observers
- Poll watchers
 - [§ 1-2-22](#) – Qualifications and restrictions
 - [§ 1-2-25](#) – Watchers; permitted and prohibited activities
 - [§ 1-2-27](#) – Watchers; appointment
 - [§ 1-2-29](#) – Watchers; permissible activities
 - [§ 1-2-30](#) – Watchers; penalty
- Police presence – [§ 1-12-5](#)
- Other –
 - [§ 1-12-12](#) – Eligibility for assistance
 - [§ 1-12-15](#) – Persons who may assist voter

State Emergency Rules and How Elections are Affected

- The secretary of state shall procure and preserve sufficient duplicate voter registration system software and operating instructions so that in case of disaster the duplicate master record and the duplicate voter registration system software and operating instructions will be all that will be required for another compatible facility to prepare registered voter lists and signature rosters with minimum delay – [§ 1-5-18\(C\)](#)
- Listed triggers for Emergency Rules
 - [§ 1-12-43](#) – Emergency situations
- Explicit remedies in election statute

- [§ 1-12-65](#) – Emergency situations; counting and tallying procedures
- Other:
 - [§ 1-6B-9\(A\)](#) – An emergency response provider may benefit from the ability to apply for a mailed ballot and to return the marked ballot in the same manner as provided in the Uniform Military and Overseas Voters Act for federal qualified electors; provided that the emergency response provider may not use the federal postcard application or the federal write-in absentee ballot
 - [§ 1-6B-9\(C\)](#) – “Emergency response provider” definition

Counting Rules

- Voting system requirements – [§ 1-9-7.7](#)
- Counting procedures See NMSA – [§ 1-13](#) Post-Election Duties
- Other:
 - [§ 1-12-29](#) – Conduct of election; counting and tallying; who may be present

Contest/Protest, Recount Rules

- Voter protesting
 - [§ 1-3-6\(A\)](#) – Any twenty-five or more voters of a precinct dissatisfied with the boundaries fixed for a precinct or location of the polling place designated by the board of county commissioners for that precinct may, within one hundred eighty days from the date a change to the boundaries of a precinct was approved in the case of a protest to the boundaries of a precinct, or at any time not less than one hundred twenty days prior to any statewide election, petition the district court of that county, setting forth the facts and reasons for their dissatisfaction and requesting that the board of county commissioners be required by mandamus to change the boundaries or polling place as set forth in the petition.
- Candidate contest – [§ 1-14-1](#)
- Contest filing guidelines – [§ 1-14-3](#)
- Challenging a voter – [§ 1-12-20](#)
- Automatic recount – [§ 1-14-24](#)
- Contest/Protest recount
 - [§ 1-14-14\(A\)](#) – Whenever any candidate believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the proper canvassing board, may have a recount of the ballots, or a recheck of the votes shown on the voting machines, that were cast in the precinct.
- Other:
 - [§ 1-14-22\(A\)](#) – The secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest or recount of election results. All rejected

provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualification of provisional ballot envelopes shall occur in a recount.

- [§ 1-14-23](#) – Recount procedures