

## NOTICE OF RULEMAKING HEARING

**Public Notice:** The New Mexico Secretary of State's Office hereby gives notice that it will conduct a public hearing in Santa Fe at the State Capitol Building, 490 Old Santa Fe Trail, Room 321, Santa Fe, New Mexico 87501, on March 30, 2018, from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 01.10.22 NMAC – Provisional Voting.

**Purpose:** The Help American Vote Act, PL 107-252, effective October 29, 2002, requires the casting of a provisional ballot in the following circumstances; a voter whose name does not appear on the roster at the polling place, county voter file, or a new voter who has not provided the required identification to. The Election Code also provides for the use of a provisional ballot qualification process in the instance of an affirmed challenge or when a replacement ballot for an absent voter is required. Most recently in 2017, the New Mexico Legislature adopted procedures specifying the use of a provisional ballot in the event of an emergency, as defined in Section 1-6-16.2, NMSA 1978. The proposed repeal and replacement of 01.10.22 NMAC, creates uniform criteria for the issuance and reporting of all provisional ballots and offers consistency in the qualification process and the counting and canvassing of the ballots for all county clerk offices. The revision also provides for the secrecy of a provisional voter's ballot during each stage of the election process, extending out through a recount or contest of the election and the ensuing requalification of the provisional ballots.

**Summary of full text:** The proposed changes relate to provisional voting in elections conducted under the NM Election Code. The changes define terms associated to provisional voting, and provide guidance on a wide range of topics including: provisional ballot issuance, procedures for precinct board members on the processing of provisional ballots, details of the provisional ballot qualification process conducted by the county clerk, notification standards to provisional voters regarding the status of their ballot and their right to an appeal hearing, and the counting and canvassing of qualified provisional ballots.

**Authority:** The Election Code, Article 2 NMSA 1978 defines the secretary of state as the chief election officer of the state and requires the secretary of state to prepare uniform instructions for the conduct of elections and registration matters. The Election Code, Section 1-6-5 mandates the secretary of state to establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots. 1 The Election Code, Section 1-6-16.1 states that the secretary of state shall adopt rules deemed necessary to preserve the secrecy of the replacement absentee paper ballots. Per the Election Code, Section 1-12-25.2, the secretary of state shall provide a free access system, such as a toll-free telephone number or internet website that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted. This section also requires the secretary of state to issue rules on how a voter may appeal the decision of their provisional ballot disqualification. The Election Code, Section 1-12-25.4 NMSA 1978 obligates the secretary of state to issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, review or recounting, and protecting against fraud in the voting process.

**Public Comment.** Interested parties may provide comment on the proposed repeal and replacement of this state rule at the public hearing or may submit written comments, or both, to Rebecca Martinez, Elections Administrator, New Mexico Secretary of State, 325 Don Gaspar Avenue, Santa Fe, New Mexico 87501, Suite 300, by electronic mail at [sos.rules@state.nm.us](mailto:sos.rules@state.nm.us) or fax to (505) 827-8081. All written comments must be received no later than 5:00 p.m. (MDT) on the Thursday prior to the public hearing. The Secretary of State encourages the early submission of written comments. Persons may also submit written comments at the public hearing.

Copies of the proposed rule may be accessed through the New Mexico Secretary of State website at <http://www.sos.state.nm.us/> at the Secretary of State's Office located at 325 Don Gaspar, Suite 300, Santa Fe NM 87501 or by contacting the Bureau of Elections at (505) 827-3600 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Rebecca Martinez at (505) 827-3600 as soon as possible before the date set for the public hearing. The Secretary of State requires at least ten (10) calendar days advance notice to provide any special accommodations requested.