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HOUSE BILL 422

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ELECTIONS; PROVIDING A REMEDY FOR USE OF INCORRECT  
BALLOTS.

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

Section 1. A new section of the Election Code is enacted  
to read:

"[NEW MATERIAL] BALLOTS--REMEDY FOR USE OF INCORRECT  
BALLOTS. --

A. As used in this section, "incorrect ballot"  
means an election ballot that fails to list the correct  
candidate for an office.

B. If an incorrect ballot is discovered after  
eligible voters have used the incorrect ballot to cast their  
votes, the precinct board shall:

- (1) lock and seal the voting machine on which

1 the incorrect ballot appears to prevent further voting on that  
2 machine, at which time that machine shall be considered  
3 disabled;

4 (2) preserve a record of the voters who voted  
5 using the incorrect ballot by marking the vote number shown on  
6 the public counter of the voting machine on both the copy of  
7 the voter list marked for the secretary of state and the  
8 signature roster;

9 (3) attach a note to the voter list marked  
10 for the secretary of state and the signature roster giving the  
11 number of the last voter who voted using the incorrect ballot;  
12 and

13 (4) if necessary, use emergency paper ballots  
14 pursuant to Section 1-12-43 NMSA 1978.

15 C. The precinct board shall notify the county  
16 clerk and the secretary of state of the incorrect ballot and  
17 of the precinct board's compliance with the provisions of this  
18 section no later than one hour after the polls close.

19 D. The votes recorded on the voting machine that  
20 was locked and sealed pursuant to Subsection B of this section  
21 shall be tallied with the votes from valid ballots from the  
22 precinct, except that the votes for incorrect candidates shall  
23 not be tallied. Written notice of this procedure and a  
24 statement of the number of voters who voted using the  
25 incorrect ballot shall be sent to the secretary of state and

underscored material = new  
[bracketed material] = delete

1 the county clerk after the signature roster is properly  
2 certified.

3 E. If a candidate contests the election results  
4 and the court finds that the number of eligible voters who  
5 relied on incorrect ballots is great enough to affect the  
6 outcome of that candidate's race, the court may order the  
7 county clerk to send ballots for that candidate's race to  
8 those voters who voted using an incorrect ballot.

9 F. The ballots prescribed in Subsection E of this  
10 section shall list the names of the candidates and office for  
11 the race in question, be in a form substantially similar to  
12 absentee ballots as prescribed by the secretary of state and:

- 13 (1) indicate the number of voters that are  
14 eligible to vote in the court-ordered vote;
- 15 (2) give the reason the voter is being asked  
16 to vote;
- 17 (3) indicate that the voter must return the  
18 ballot within fourteen days of receiving it;
- 19 (4) be mailed to the voter by certified mail,  
20 return receipt requested; and
- 21 (5) be mailed with a prepaid return envelope  
22 addressed to the county clerk of the county within which the  
23 voter's precinct lies.

24 G. Returned ballots shall be counted and tallied  
25 by the county clerk in the presence of the district court

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1 judge or his representative and the results added to the  
2 candidates' respective vote totals and reported to the court  
3 and the secretary of state. Ballots not received by the  
4 county clerk within eighteen days of the county clerk's  
5 mailing shall not be counted."

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