

## CHAPTER 51

### CHAPTER 51, LAWS 2002

#### 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:

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

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

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

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

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

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

state and the county clerk after the signature roster is properly certified.

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

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

(1) indicate the number of voters that are eligible to vote in the court-ordered vote;

(2) give the reason the voter is being asked to vote;

(3) indicate that the voter must return the ballot within fourteen days of receiving it;

(4) be mailed to the voter by certified mail, return receipt requested; and

(5) be mailed with a prepaid return envelope addressed to the county clerk of the county within which the voter's precinct lies.

G. Returned ballots shall be opened, counted and tallied by the county clerk in the presence of the district court judge or his representative and the results added to the candidates' respective vote totals and reported to the court and the secretary of state. Ballots not received by the county clerk within eighteen days of the county clerk's mailing shall not be counted."