

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09
 SPONSOR SRC LAST UPDATED 03/05/09 HB _____
 SHORT TITLE Post-Election Voting Accuracy Evaluation SB 72/SRCS/aSJC/aSFL#1
 ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$30.0	\$30.0	\$90.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Secretary of State (SOS)
 County Clerks Affiliate (CCA)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor amendment to the Senate Rules Committee Substitute for Senate Bill 72 removed discretion given to the post-election auditor from testing additional precincts and electronic vote tabulators.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Rules Committee Substitute for Senate Bill 72 directs the auditor to select the random sample in a process that ensures at least 90 percent accuracy that faulty tabulators would be detected if they would change the outcome of the election for a selected office.

Synopsis of Original Bill

The Senate Rules Committee Substitute for Senate Bill 72 would enact new provisions in the Election Code (Chapter 1 NMSA 1978) requiring the Secretary of State to contract with an auditor, qualified by the State Auditor, at least ninety days prior to each general election to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico. No later than twelve days after the election, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state. The auditor must select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district.

The substitute bill includes a table which establishes the size of the random sample of precincts from a pool of all precincts in the state to be tested for each selected office based upon a percent of the “winning margin” between the top two candidates for that office according to the county canvasses. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required. The number of precincts that must be examined increases as the winning margin percentage decreases. The auditor may choose to test additional precincts and electronic vote tabulators if initial election results indicate that more auditing will be necessary to explain any anomalies in a county canvass or if preliminary results of the audit indicate the need for more testing.

The auditor must notify the appropriate county clerks of precincts selected for a voting system check. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals for candidates for those selected offices from the selected precincts with the respective vote totals of a hand recount of the paper ballots from those precincts. The substitute bill provides that county canvass observers may observe the hand recount. The county clerks shall report their results to the election auditor within ten days of the notice to conduct the voting system check. The auditor will then determine the error rate in that sample from each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample shall be reported, and if it exceeds ninety percent of the winning margin for the office, the state canvassing board shall order that a full hand recount of the ballots for that office be conducted. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

If a recount for an office selected for a voting system check is conducted pursuant to the provisions of NMSA Chapter 1, Article 14 (relating to election contests and recounts), the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

The substitute bill also enacts a new provision in the Election Code (NMSA Chapter 1) providing that the Secretary of State shall issue rules for the conduct and procedures of the post-election voting system check, set minimum qualifications for auditors eligible for selection to conduct post-election evaluations of the accuracy of voting systems and approve the contract terms for auditors. The State Auditor shall review the rules, qualification standards and contract terms to ensure they meet audit standards.

The bill repeals NMSA Section 1-14-13.1 which sets forth procedures for a voting system check after a general election for the offices of President and Governor.

FISCAL IMPLICATIONS

The Secretary of State estimates auditor costs at \$20 thousand annually. The County Clerks Affiliate explains that the primary fiscal impact of this bill is on the counties, which have to conduct the work of the post-election audit however, it is unknown before the election how many precincts and how many counties will be involved in the post-election audit. It is estimated by CCA that costs will be approximately \$30 thousand, \$15 thousand paid to the post-election auditor and \$15 thousand to reimburse counties.

SIGNIFICANT ISSUES

This bill requires that a contract auditor test electronic vote tabulators used in randomly selected precincts for errors in vote counts for certain offices based upon the percentage difference between the winning candidate and the candidate. The machine vote count would be compared against a hand recount of paper ballots. The lower the percentage between the top two candidates, the higher the number of precincts which must be tested by the auditor. No voting system check is required if the winning margin in none of the offices for which a voting system check is less than fifteen percent. It is unclear why fifteen percent was selected as the number.

Current law requires voting system testing for accuracy (see NMSA Sections 1-9-2, 1-9-7.2, 1-9-14) and an automatic recount when the canvass of returns for a federal or state office in a primary or general election indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one-half of one percent of the total votes cast for that office in that election. NMSA Section 1-14-24. This bill does not amend those sections.

ADMINISTRATIVE IMPLICATIONS

The county clerks would be directed to compare the original precinct vote totals for candidates for those selected offices from the randomly selected precincts with the respective vote totals of a hand recount of the paper ballots from those precincts in accordance with state auditor rules.

RELATIONSHIP

House Bill 698 appropriates \$665 thousand from the general fund to the Secretary of State for the purpose of maintaining, updating and supporting the voting systems owned by the state pursuant to Section 1-9-20 NMSA 1978. House Bill 698 excludes voting systems purchased with state or federal funds in calendar year 2006 from the custody and care of the county clerk pursuant to NMSA 1978, Section 1-9-12 (1953, as amended through 2001). Instead, the bill provides that such systems will be owned and maintained by the state and placed in the custody

of the county using the voting system. The county would be required to safely store the systems pursuant to guidelines issued by the secretary of state and would be responsible for storage costs.

OTHER SUBSTANTIVE ISSUES

Currently, there is no maintenance on the paper ballot systems. Lack of a maintenance agreement is cause for concern. PCMCIA Cards, or memory cards, used with the M100 tabulator to track every vote cast by every voter and tally them at the end of the day, should the cards fail, votes would have to be hand counted and/or service, parts and equipment would have to be purchased on the spot.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this legislation is not enacted, the Secretary of State and county clerks will continue to conduct random audits.

EO/mc:svb:mt