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FISCAL IMPACT REPORT

SPONSOR McSorley DATE TYPED 3/7/05 HB _____

SHORT TITLE Election Requirements SB 1065

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Minimal	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to the Election Code

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General

SUMMARY

Synopsis of Bill

Senate Bill 1065 amends sections of the Election Code relating to voting system, election procedures, paper ballots, canvassing procedures, recounts, audit of election returns, and election certification.

The bill proposes new language and amends existing language to require:

- That voting systems approved by the Secretary of State use open-source software in all parts of the voting system that use software;
- the Secretary of State approve for purchase only voting systems that have a voter-verifiable paper ballot;
- certified election results be printed as a hard copy and placed on compact disc, both of which are to be delivered in person, and not transmitted over the Internet or other electronic means, to the Secretary of State;
- voters reserve the right to request, vote on, and have counted a paper ballot;
- county clerks notify voters whose ballots have been disqualified and allow those voters seventeen days after the election to correct deficiencies in order that their ballots be

- counted;
- an independent audit of the election returns be conducted using a random sample of ten percent of the precincts in each county, with a provision that if the margin of victory in any race is one percent or less, a full hand recount of the race be conducted at the expense of the governmental district;
 - an Election Commission be created, composed of the Secretary of State (Chair), Attorney General, Chief Justice of the Supreme Court, the executive director of the New Mexico Association of Counties, and three nonpartisan public members appointed by the Governor and confirmed by the Senate, of which one is to be an expert in statistics and two are to represent nonpartisan voter information or education organizations;
 - the Election Commission meet after each statewide election and establish criteria for electoral quality, create and disseminate public-use, precinct-level, analytic files, conduct an report on routine quality audits, examine possible disenfranchisement, certify election recounts, certify audit results, and force recounts in questionable cases;
 - written instructions regarding observers and challengers be issued by the Secretary of State to the precinct boards;
 - precinct boards have two nonpartisan presiding judges;
 - the county clerks provide one voting system per precinct for an election when the total number of registered voters in that precinct amounted to fewer than four hundred at the close or registration;
 - the county clerk notify the county's party chairmen as to the location of the voting machine preparation prior to testing and preparation of a voting machine for an election;
 - missing election returns from precincts have eighteen, rather than ten days following an election to be secured and conveyed to the Secretary of State;
 - the county canvassing board complete the canvass and declare results within eighteen, rather than ten, days from the date of the election; and
 - certificates of election or nomination be issued within thirty-six, rather than thirty-one, days after an election.

Significant Issues

The Attorney General's staff analysis notes that the bill's language is repeatedly imprecise and will create issues for legal challenges.

TECHNICAL ISSUES

The Attorney General's Office notes the following technical issues:

Page 2, line 1. What is the definition of "open source?" Does the owner of the software get to assert proprietary rights?

Page 2, line 8. Who conducts the "independent audits?"

Page 3, lines 1-3. Does the county have to have a paper ballot feeder at each precinct? Or does the precinct judge hold onto the paper ballot and then deliver it to the main warehouse after 7pm?

Section 3, line 9. Who alerts the county chairs?

Page 4, line 8. Who conducts the "independent audits?"

Page 4, line 14. Who conducts the "blinded" recount?

Page 4, line 15. Who is going to be knowledgeable enough about voting systems to be unaware of the official tally?

Page 4, line 16. What does “investigated” mean? By whom?
Page 5, line 1. What does “standard” mean?
Page 5, line 10. What does “plausible” mean? Who makes that decision?
Page 5, lines 13-14. What does “likely sufficient” mean? Who makes that decision?
Page 5, lines 14-15. Who participates in the “agreement?”
Page 5, line 17. What does “uncorrectable errors” mean?
Page 5, line 21. What does “any race” mean? A race for county sheriff will trigger a full hand recount (and its expense) for every race on the ballot?
Page 5, line 23. Who is the “governmental district?”
Page 6, line 12. What does “nonpartisan” mean?
Page 7, lines 17-20. What does this subsection mean?
Page 7, line 21. What does “routine quality audits” mean?
Page 7, line 25. What does “when evidence merits” mean?
Page 8, line 1. Who are the prosecutors?
Page 8, line 5. What does “force” mean?
Page 8, line 6. What does “questionable” mean?
Page 14, line 9. What does “fifth” Tuesday mean?

OTHER SUBSTANTIVE ISSUES

The following substantive issues are also raised by the Attorney General’s Office:

Section 2 will require counties to buy more memory cartridges (instead of reusing them). Does the county need an appropriation? Should NMSA 1978, Sections 1-13-21, -22 be repealed?
Section 5 will require the clerk to publish the names of *disqualified* voters in the newspaper. What about privacy issues?
Section 5 will allow voters to “correct” the deficiencies in their ballots. If Al Gore lost by 366 votes in New Mexico, what is to stop him from contacting 367 voters and paying them \$100 to correct their “deficiencies” for him?
Section 6(F) will allow the re-holding of elections in certain precincts. If Al Gore lost by 366 votes in New Mexico, what is to stop him from contacting 367 voters in that precinct and paying them \$100 to vote for him now?
Section 7 creates an Election Commission. Is this redundant of the State Canvassing Board? The State Canvassing Board is a constitutional entity. Article XX, Section 7.
Section 9 has two presiding judges. What happens when they disagree?
Section 14 moves the State Canvassing Board meeting back two weeks. Will this prevent a presidential candidate from having time to receive a recount before the Presidential Electors meet?

ALTERNATIVES

Election reform legislation could be analyzed during the interim allowing for more input from voters and others concerned with election reform.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The election reforms proposed would be postponed.