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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/06

SPONSOR López LAST UPDATED 2/14/06 HB _____

SHORT TITLE Require Paper Ballots for all Voting Systems SB 295/aSRC/aSPAC/aSFI#1

ANALYST Medina

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	(See Fiscal Implications)		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 530, which contains a \$4,000.0 appropriation to implement the provisions of the bill.

Duplicates HB 430

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AG)

Secretary of State (SOS)

SUMMARY

Synopsis of SFI Amendment # 1

Senate Floor Amendment #1 to Senate Bill 295, as amended, strikes Senate Public Affairs Committee Amendments 2 through 4. The bill is then amended to require all voting systems used in elections covered by the Election Code to use a paper ballot, provided that voting systems owned or used by a county on March 1, 2006 that do not use a paper ballot may be used until sufficient federal, state or local funds are available to replace the voting systems, acquire the necessary software, pay the existing debt on the voting systems to be replaced and provide sufficient funding for the Secretary of State to purchase the paper ballots for all counties to use on the new voting systems for primary and general elections. This amendment strikes the December 31, 2007 deadline, which in previous versions was an alternate deadline requiring the use of voting systems with paper ballots.

Synopsis of SPAC Amendment

Senate Public Affairs Committee Amendment to Senate Bill 295, as amended, strikes the Senate Rules Committee Amendment. The amendment then refines the requirement that all voting systems owned or used by a county on March 1, 2006 that do not use a paper ballot may be used until the first occurrence of the following:

- (1) and adequate supply of voting systems is available and are available to:
 - a. replace the voting systems;
 - b. acquire the necessary software;
 - c. pay the existing debt on the voting systems to be replaced; and
 - d. provide sufficient funding for the Secretary of State to purchase the paper ballots for all counties to use on the new voting systems for primary and general elections; or December 31, 2007.

The amendment further clarifies that in any event, a voting system shall not be used if it has not been certified by the Secretary of State and if a competitive bid process has not been completed that includes at least two different voting system manufacturers that have certified paper ballot systems.

Synopsis of SRC Amendment

Senate Rules Committee Amendment to Senate Bill 295 refines the requirement that all voting systems owned or used by a county on March 1, 2006 that do not use a paper ballot may be used until the first occurrence of the following: sufficient federal, state or local funds are available to replace the voting system, acquire the necessary software, provide sufficient funding for the Secretary of State to purchase the paper ballots for all counties to use on the new voting system for primary and general elections and an adequate supply of voting systems is available or December 31, 2007.

Synopsis of Original Bill

Senate Bill 295 amends the Election Code to require the use of paper ballots for all voting systems in the state. The bill requires that all voting systems that do not use paper ballots be removed and that county clerks insure that an adequate number of voting booths are provided at polling places. The bill further requires that the paper ballot from this system be used for the purpose of conducting recounts. Currently, non-paper ballot elections are permissible until December 31, 2007 or until sufficient federal, state or local funds are available to replace the current inventory of touch screen systems *and* an adequate supply of paper ballot systems are available. This bill prohibits the purchase of non-paper ballot systems after March 1, 2006 and requires a delayed repeal of the statute setting that standards for touch screen voting system standards on December 31, 2007. This bill carries an emergency clause.

FISCAL IMPLICATIONS

This is a companion bill House Bill 530, which carries an appropriation of \$4,000.0 from the general fund to the Secretary of State for the purpose of purchasing voting machines from counties that purchased voting machines to meet new voting system standards. The appropriation would be made if legislation, such as House Bill 430, is enacted requiring the replacement of those voting machines.

SIGNIFICANT ISSUES

According to the Attorney General's Office,

“If New Mexico goes to a paper ballot system, it will need tabulators on site (i.e. to feed the ballot into). The federal HAVA money will fund a tabulator at every “polling place.” This raises two questions:

- (a) State law Section 1-9-5 uses the term one voting system per “precinct”—does that mean there will be a tabulator in every polling place or every precinct?
- (b) can the state save money and amend State law Section 1-9-5 so there only needs to be one tabulator per 800 or 1000 voters?

The Attorney General's Office supports the policy choice of going to a uniform paper ballot system. The AGO believes it is the better system to restore public confidence in elections and a uniform system will create greater consistency in the administration of elections. The AGO also believes this will decrease election litigation filed against the Secretary of State.

There is current litigation against the Secretary of State (Lopategui, et al v. Secretary of State, CV 2005-00443, State District Court) requesting the out-right prohibition of touch screen systems in New Mexico. The case is currently in discovery and may have a trial date before June 2006.”

ADMINISTRATIVE IMPLICATIONS

According to the Secretary of State,

“If House Bill 430 is enacted a statewide education program by the secretary of state will be needed to educate the county clerks who are not currently using paper based systems on the programming, testing, certification procedures and Election Day use. County clerks as well will need to reeducate all of the Election Day workers (poll officials) as well as early voting workers on the proper use of the machines. Voters in the counties will also need to be instruction on the use of the machine.”

The Secretary of State would also need to train and certify county elections staff on the use of the election programming and result reporting software.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is a companion to House Bill 530 and a duplicate of House Bill 430.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office states:

“A paper ballot system is not a panacea for solving election fraud. The Legislature should consider devices and controls to ensure that paper ballots are not “found in a box” on Election Day.

The opposition to touch screen machines is based on allegations of electronic manipulation. The tabulators are also electronic devices and the Legislature should consider adding greater testing sessions in public venues in advance of the election to establish public confidence that the tabulators are free from fraud.”