

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 1/18/08

SPONSOR Campos, J LAST UPDATED \_\_\_\_\_ HB 113

SHORT TITLE Election Recount Procedures SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$500.0	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$500.0		Recurring	Automatic Recount Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Association of County Clerks (ACC)

Attorney General's Office (AGO)

#### Responses Received From

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

House Bill 113 appropriates \$500 thousand from the general fund to the automatic recount fund, which is a new fund, for the purpose of reimbursing counties for expenses incurred in conducting automatic recounts with money from the "Automatic Recount Fund." The Automatic Recount Fund shall consist of money distributed or transferred or otherwise accruing to the fund. Balances over \$1,500,000 at the end of the FY shall revert to the general fund.

An automatic recount will occur if the top two finishers in federal or state offices in a general election are separated by less than one-half of one percent of the total votes cast for that office. If this occurs the Secretary of State, within five days of completing the state canvass, shall notify the State Canvassing Board that an automatic recount is required. It defines state office as: Governor, Lt. Governor, State Auditor, State Treasurer, Attorney General, Secretary of State, Supreme Court Justice, Court of Appeals Judge, District Judge, Magistrate Judge, PRC Commissioner, Commissioner of Public Lands, State Senator, and State Representative.

The appropriate canvassing board shall issue an order to the appropriate county clerk to convene the absent voter precinct board within no more than 10 days. The county clerk shall send notice by registered mail of the date of the recount or recheck to the district judge for the county, the absent voter precinct board members and the county chair of the political parties. The county clerk, district judge and absent voter precinct board shall meet and conduct the recount or recheck in the presence of the county clerk, district judge and any other person who may desire to be present. The absent voter precinct board shall certify the results of the recount or recheck to the Secretary of State. The term “absent voter” is added to modify the term “precinct boards” in Section 1-14-18.

### **FISCAL IMPLICATIONS**

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

#### Continuing Appropriations language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

### **SIGNIFICANT ISSUES**

The AGO notes that the bill would create an initial appropriation of \$500,000.00 for FY09 yet several factors are unknown including cost of a recount; the number of recounts required in any given period of time, and the bill does not provide language to address what would happen if there were multiple recounts in an election cycle and the available funds were depleted.

The bill repeals two key items in the existing law. First, the appropriate canvassing board would issue orders for recounts. Currently, the process is to issue a summons, which requires hiring a sheriff. The bill might reduce costs because sheriffs would not need to be hired to serve the summons. Second, this order instructs only the absent voter precinct board, as opposed to the current process of all precinct workers, to handle the recount.

### **TECHNICAL ISSUES**

The AGO points out that the bill defines magistrate judge as a state officer even though it has

traditionally been viewed a county or local political subdivision officer.

**OTHER SUBSTANTIVE ISSUES**

The Association of County Clerks notes that since the bill requires notification by registered letter, the board may not be fully available and the bill does not address the procedure if the absent voter precinct board is not available in its entirety. It also expresses concern that the bill opens recounts to anyone interested in attending but locations may not be able to accommodate large audiences.

The AGO adds that it is unclear whether the absent voter precinct board alone has enough staff to handle a recount.

**POSSIBLE QUESTIONS**

Why should the fund be limited to a maximum of \$1.5 million? Is there data from other states with automatic recounts to support the funding provided in this bill?

EO/nt