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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/10  
 LAST UPDATED 02/17/10    **HB** \_\_\_\_\_

SPONSOR Duran

SHORT TITLE Voting System Certification Procedures    **SB** 136/aSRC/aSJC

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	\$350.0	Recurring	Electronic Voting System Revolving Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB198

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>			\$350.0	\$350.0	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 Association

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 136 adds language indicating the voting system revolving fund may be used to pay for state or county-owned voting systems hardware, software, firmware, maintenance and support certified for use in state elections. It also adds that the voting system revolving fund shall maintain a balance of no less than \$1 million.

Synopsis of SRC Amendment

The Senate Rule Committee amendment to Senate Bill 136 inserts a new section that requires the Secretary of State to maintain records of the voting system of any component, to train and recertify voting system technicians prior to each primary election and to adopt rules governing the use of electronic voting systems regulating the scope of training provided to voting system technicians to ensure that voting system warranties are not invalidated and equipment owned by the state is protected. It also clarifies language and changes the effective date to January 1, 2011.

Synopsis of Original Bill

Senate Bill 136 appropriates \$350 thousand from the electronic voting system revolving fund to Office of the Secretary of State to maintain, update and support the voting systems approved for use at elections in the state.

It enacts new sections of the election code to (1) provide voting machine certification procedures, (2) create a voting system certification committee, (3) provide for the purchase, storage, custody, maintenance and security of voting systems, (4) impose operational requirements on voting systems, and (5) provide for ballot handling and processing.

It amends sections of the election code to (1) require the Secretary of State to certify voting systems and acquire these in accordance with the Procurement Code, (2) no longer require counties to purchase voting systems and instead require the SOS to provide a “sufficient” number of systems as required by the election code and allow counties to acquire “additional” machines, (3) permit a certified voting system to print ballots at a polling location if this saves money, (4) require voting systems to be certified by the SOS or the US election assistance commission and to be tested by an independent authority, and (5) provide for removable storage media devices for certified voting systems.

It repeals several sections of the election code related to SOS approval of voting machines, and removing references to electronic voting and vote tabulating machines.

**FISCAL IMPLICATIONS**

The appropriation of \$350 thousand contained in this bill is a recurring expense to the electronic voting system revolving fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the electronic voting system revolving fund. The electronic voting system revolving fund has no ongoing revenue source and cannot support a recurring expense. If the bill passes, the fund will be at about \$40 thousand.

SB136 would require the Secretary of State to provide at least one voting system at each polling location. Currently, statute requires the county commissioners to purchase voting systems. However, when 1.9.7.1 NMSA 1978 was enacted requiring paper ballot voting systems, the state purchased those systems. Since the purchase of the systems did not follow statute, there has been disagreement over who should have ownership and pay maintenance cost on the paper ballot voting systems. While this bill seems to address those issues, it would impact the general fund only if new voting systems are purchased but certainly for annual maintenance costs on the paper ballot systems, which according to this bill is \$350 thousand, annually. Although not necessarily required annually, there are potential future year costs for all hardware, software, firmware upgrades, which could reach another \$250 thousand per year.

This bill also has the potential to reduce costs because it mandates the use of ballot on demand-type systems where cost savings would be realized but the agency would need to conduct a comprehensive cost benefit analysis to verify the saving, if any. The Secretary of State indicates that it is reviewing the possibility of purchasing a system designed to print ballots a polling location, which may result in cost savings.

### **SIGNIFICANT ISSUES**

SB136 attempts to address the ownership and maintenance issues that have plagued the state-purchased paper ballot systems. In addition, it requires the state to purchase ballot on demand, where there is a cost savings (see “other significant issues” for more information).

In a February 12, 2010 HAFC hearing the SOS explained minimal cost savings by using ballot on demand versus preprinting ballots in Bernalillo County.

However LFC staff conducted research and found that if ballot on demand or Auto Vote replaced preprinting ballots in the Bernalillo County primary election, there would be an approximate savings of \$789 thousand. This is significant because the SOS states a \$467.8 thousand shortfall for the 2010 primary. The switch to printing ballots as needed would negate the agency’s reported shortfall.

#### **BERNALILLO COUNTY BALLOT COST ANALYSIS**

- SOS generated a spreadsheet for the primary election expenses in Bernalillo County, the agency projects 326,061 registered voters and printing 831,455 ballots for a cost \$957 thousand.
- The SOS reported that Ballot on Demand/Auto Vote would only generate approximately a \$37 thousand savings in Bernalillo County.
- Dona Ana County currently uses Auto Vote, along with more than 20 other counties and the cost is \$3500/unit inclusive of supplies. These counties currently cover the cost and do so because preprinted ballots come with issues of potential voter fraud and storage.
- The SOS reports that Auto Vote in Bernalillo County is \$8500/per unit but further research reveals that the SOS has included two additional components Dona Ana County does in-house – an Auto Vote employee at each early voting site and Auto Vote to set-up the wireless link. Bernalillo County indicated it would not want these items included either.
- Statute requires the state to pay for early voting at 12 sites in Bernalillo County and Bernalillo County indicated it would need four Auto Votes units at each early voting site, or 48 units. Assuming a cost of \$3500/unit and 48 are needed, the cost is approximately \$168 thousand.
- As noted in the first bullet, the SOS requests \$976 thousand for preprinting ballots for Bernalillo County but if Auto Vote is used, the cost is \$168 thousand, and if the agency leases at the \$8500/unit price the cost is \$408 thousand, still \$568 thousand less than the agency’s request for preprinting ballots in Bernalillo County.

## PERFORMANCE IMPLICATIONS

According to the Secretary of State the amendment of article 1-9-12 to require proper storage of the voting equipment is extremely important since it has previously had problems with storage of equipment in buildings that were not adequate. The County Clerks Association also stated the importance of storage. This bill will ensure that the state's equipment is appropriately stored by the counties. In addition, the technical, operational and processing requirements have been updated to reflect the role of the US Election Assistance Commission voting system standards and to delete some terms that are not able to reflect the changing language of technology.

Currently, the Election Code does not provide for de-certifying a voting system or requirements for periodic re-certification. This bill provides a re-certification and de-certification process. In addition, the bill removes conflicting and contradictory language in the certification process and provides for an open and independent process when certifying new voting systems. The bill also adopts federal standards for voting systems while maintaining certain New Mexico-specific standards to be followed.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB198 which makes the state the owners of the paper ballot voting systems purchased in 2006 and if funds are appropriated by the legislature, the state shall be responsible for hardware, software, firmware, maintenance and support of those systems.

## TECHNICAL ISSUES

Misspelling of the word “deputies” is on page 3, line 18.

Federal certification standards are adopted while maintaining New Mexico's paper ballot requirements and consistent New Mexico standards. The voting systems currently used in New Mexico may not qualify under the technical standards currently in place in the Election Code.

## OTHER SUBSTANTIVE ISSUES

Below is an article that discusses New Mexico's current use of ballot on demand.

### **Removing Barriers to Voter Verified Paper Ballots**

### **Ballot on Demand to Increase Flexibility of Paper Ballot Voting**

[http://www.ncvoter.net/downloads/Ballot\\_on\\_Demand\\_as\\_Done\\_in\\_New\\_Mexico.doc](http://www.ncvoter.net/downloads/Ballot_on_Demand_as_Done_in_New_Mexico.doc)

April 4, 2007. By Joyce McCloy. Founder, N.C. Coalition for Verified Voting.

Governor Charlie Crist of Florida is pushing to replace touchscreen voting machines with optical scan systems. He proposes to utilize a unique on site ballot printing system to reduce the costs and logistics issues with ballot printing.

*Crist said ballot on demand is a ballot producing system that can also be utilized for absentee voting.*

*"Ballot on demand allows for individual optical scan ballots to be printed when the voter arrives for early voting, thus eliminating the need for touch screens with voter verifiable paper audit trails," Crist said. <http://www.allheadlinenews.com/articles/7006843854>*

As more states across the country switch to paper ballot voting systems, ballot on demand printers provide a promising solution to reducing expenses and decreasing logistical challenges of getting the right number of the right ballots to the right location. Ballot on demand systems print individual paper ballots at the voting site, as needed. This system could reduce ballot printing expenses and make distributing multiple ballot styles at early voting sites much easier to do.

Since very little is written about “ballot on demand” systems, some research was needed. I called one New Mexico County’s election department that was known to use the system. Additionally, Paul Stokes, a voting advocate from New Mexico provided his research and in person observations. Finally, I contacted the actual vendor who supplies the ballot on demand services for New Mexico jurisdictions.

4/2/07 4:13 PM Eastern, from interview with Melanie Rivera who works at the San Miguel County Elections Office. Ms. Rivera was very enthusiastic about the use of Ballot on Demand in San Miguel County. She advised that: New Mexico doesn’t use ES&S' ballot on demand, they use the services of Automated Election Services. Contact information can be found at <http://www.electionpeople.com/>

#### **How is Ballot on Demand Done? Per Automated Election Services:**

- The ballot on demand is done with computers programmed with all of the different ballot styles.
- HP printers that use toner cartridges are used to print the ballots.
- The counties pay for the use of the laptops, PCs or printers, instead of purchasing them.
- A county with about 10,000 voters per early voting site might need about 4 printers (estimate only)

#### **How San Miguel County New Mexico uses ballot on demand? Per Melanie Rivera of the San Miguel Elections Department:**

- San Miguel has about 22,000 registered voters,
  - they have 3 early voting sites,
  - they keep their early voting sites open about 3 weeks,
  - they are required to report precinct data from early voting,
  - they have one laptop computer and one HP printer at each early voting site, and
  - they have 2 extra laptops at their county office in case one would break down at any early voting site.
- Ms. Rivera said that AES' service was always available 24 hours a day and was excellent.

#### **Per Paul Stokes, e-voting expert and advocate from New Mexico:**

“All New Mexico counties use M100s (ES&S optical scanners) and AutoMARKs.”

"Our M100s in New Mexico had a new software version to allow for use at early voting sites. This version can handle enough ballot styles to take care of our largest county, Bernalillo, with 450 precincts."

At early voting sites using the ballot on demand, Paul advises that: "The voter signs in, the ballot on demand system records a log of voters, the ballot for the precinct is printed, the voter goes to a booth and fills out the ballot, and then on to the opscan.

Bernalillo County, for one, did not use ballot on demand because the programming could not be done in time. According to the provider, Automated Election Services here in New Mexico, 19 of 33 counties leased and used their ballot on demand printer. The largest of these counties was probably Dona Ana, with 105 precincts. This ballot on demand system is a product of Automatic Election Services, and in addition to printing the ballots, it maintains the log of voters and prints an "application" for early voting that is signed by voters at the site. ES&S also has a ballot on demand product.

Final notes - AES is based in New Mexico but possibly a similar service could be provided elsewhere.

Reported by Joyce McCloy - Founder, NC Coalition for Verified Voting, [www.ncvoter.net](http://www.ncvoter.net) Email [jmc27106@earthlink.net](mailto:jmc27106@earthlink.net) or phone 336.794.1240.

## **ALTERNATIVES**

An amendment the County Clerks Association suggests on page 18, line 19 is as follows: "The secretary of state shall require voting system technicians to undergo training prior to each primary election to maintain their certification."

If this language is left as "may" and "periodic", technicians may end up untrained or only sporadically trained. It is extremely important to the integrity of our elections that this training takes place for each election cycle.

EO/svb:mew