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## FISCAL IMPACT REPORT

SPONSOR Sandoval DATE TYPED 2/17/04 HB 501/aHVEC/aSRC

SHORT TITLE Election Reforms SB \_\_\_\_\_

ANALYST Collard

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 245

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State

Attorney General

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee Amendment to House Bill 501 increases the number of petition signatures needed by a district court for a recount or recheck from 25 to 100. The Amendment also adds a new section to the bill. This section requires the applicant or petitioner to deposit \$50 with the proper canvassing board for each precinct in which the recount is demanded, or, in the case of the proper canvassing board being the state canvassing board, the applicant or petitioner will deposit \$50 with the Secretary of State for each precinct in which the recount is demanded. It also requires the applicant or petitioner, in a recheck, to pay \$10 per voting machine checked, either to the proper canvassing board, or, in the case of the state canvassing board, the Secretary of State. These charges will be used for the payment of the expenses of the recount or recheck if the results are not sufficient to change the results of an election.

Synopsis of HVEC Amendment

The House Voters and Elections Committee Amendment to House Bill 501 moves the electronic filing requirements back to 2005. The Amendment permits Class A and Class B counties to deliver absentee ballots earlier to precinct boards than other counties.

Synopsis of Original Bill

House Bill 501 proposes several Amendments to the Election code as a result of the Election Reform Task Force recommendations. It proposes:

- Permitting “election related” organizations in the polling places for all elections;
- Eliminating the conflict created during the last legislative session that requires canvassing of elections to be by both precinct and legislative district (an impossibility for most of the state’s voting systems);
- Requiring the inner envelope on absentee ballots to be opened by the precinct board five days prior to the election and registered on an optical scanning vote tabulator;
- Allowing recounts for any election (recounts are now limited only to elections with candidates);
- Accelerating the effective date for electronic campaign reporting from 2006 to May 2004 and requires the specification of occupation or type of business for contributors;
- Permitting county canvassing boards to request assistance for the Secretary of State if the board believes its county clerk is not able to complete the canvass timely; and
- Requiring that all voting systems purchased in the state after May 20, 2004 be capable of electronic transmission of results.

**FISCAL IMPLICATIONS**

The Secretary of State indicates the administrative implications will require additional staff.

**ADMINISTRATIVE IMPLICATIONS**

The Secretary of State indicates moderate to severe implications. Most of the items listed in this bill will require increased supervisory activity or action by the Secretary of State. Unless additional staff is provided by the legislature, the Bureau of Elections is not confident that the intent of these changes can be accomplished without negative overall effect on the election process in our state.

For example, should the Secretary of State’s staff be requested to complete the canvass for a county, it would mean that the Bureau of Elections would have to leave the state’s canvass and risk missing our deadline. Other portions of the bill similarly impact the Bureau and will require additional voter education and staffing of telephones. The early opening of ballots may require assignment of attorney general or district attorney investigators.

**RELATIONSHIP**

Language in Senate Bill 245 duplicates Sections 11 through 13 of House Bill 501.

## TECHNICAL ISSUES

The Attorney General notes as general rule, the Election Code needs to be very clear or the county clerks and Secretary of State will face exposure in disputed litigation:

- Section 5 seems unclear on when and what day the presiding election judge can open both envelopes. The bill deletes several sections of law that limit this task to Election Day.
- Section 11 does not completely clarify rights in non-candidate elections.
- Section 14 seems unclear on what detail the expenditure and its use must be documented.
- Section 15 seems unclear on whether the Secretary of State must agree (and by when) to the county canvassing board's request.
- Section 16 seems unclear on whether the Secretary of State must implement the remote transmission election system and unclear whether the Secretary of State may pass rules to ensure electronic protection.

Additionally, the Attorney General notes the term "ballot question" is not defined in Section 11. Section 11 raises several issues:

- The right of election contest is not created for ballot questions: NMSA 1978, Section 1-14-1 only provides that "[a]ny unsuccessful candidate" may contest an election.
- NMSA 1978, Section 1-14-15 establishes fees to be paid by an "applicant" for a recount or recheck. It is not clear who pays these fees, if any, or in what amounts for a recount or recheck in a "ballot question" election.

Finally, the Attorney General notes the bill states that a county canvassing board may opine that the county clerk "is unable to complete the canvass in a timely fashion" in Section 15. Should the verb be "will be" instead of "is?"

## OTHER SUBSTANTIVE ISSUES

The Secretary of State notes that requiring all counties to open and register ballots may not be the only alternative to timelier election returns. Most delay in counting occurs in Class A counties with heavy use of absentee ballots. It might be possible to achieve the same result if only Class A counties are required to open and register and other counties are permitted to do so at the discretion of the local election official.

## POSSIBLE QUESTIONS

1. Do the twenty-five (25) voters applying for a recount and/or recheck have to specify certain precincts or the entire county?

**KBC/prr:dm**