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FISCAL IMPACT REPORT

SPONSOR Gorham DATE TYPED 2/16/04 HB _____

SHORT TITLE Recounts for Elections with No Candidates SB 245/aSRC/aSF1#1

ANALYST Collard

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General

Secretary of State

SUMMARY

Synopsis of SFl Amendment #1

The first Senate Floor Amendment #1 to Senate Bill 245 inserts a new section into the bill that allows any 100 voters of the state to petition the appropriate district court to contest a ballot question. If a court finds the result of an election on a ballot question was changed because of fraud or error, the declaration of results shall be changed to reflect the findings of the court. If the court does not find the results to be changed, the petitioners will pay the costs of the state and county involved in each case. The petitioners are also allowed to request the impoundment of ballots in precincts in the county. The courts are required to issue an order of impoundment upon receipt of the petition and \$25.

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 245 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 de-

manded. 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 Original Bill

Senate Bill 245 proposes to include recounts in elections that do not have candidates in the Election Code. Presently, the Election Code only provides for candidates to request recounts. There is no provision for a recount on a question. The bill adds provisional paper ballots to recount and recheck provisions. It creates the right on an election ballot question for every 25 voters in a county to petition for a recount of emergency paper ballots, provisional ballots, and absentee ballots, as well as for a recheck of voting machines. Such a petition must be filed within six days of the completion of the county canvass.

Significant Issues

The Attorney General notes the bill may not completely clarify rights in non-candidate elections.

FISCAL IMPLICATIONS

Although there is no appropriation, the Secretary of State indicates the cost for conducting a recount is vastly understated in the Election Code and the amount charged should be raised for any recount.

TECHNICAL ISSUES

The Attorney General notes the term “ballot question” is not defined.

OTHER SUBSTANTIVE ISSUES

The Secretary of State proposes Section 1-14-15A be amended to require a \$500 hundred surety bond for each precinct. This will include payments for summons delivery and compensation for precinct boards. The cost for recheck of voting machines should be raised to \$25 per machine. Unexpended bonds, if any, should be refunded to the applicant.

The Attorney General notes 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. Additionally, 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.

POSSIBLE QUESTIONS

Do the 25 voters applying for a recount and/or recheck have to specify certain precincts or the entire county?

KBC/prr:dm