

Synopsis of Senate Floor Amendment #1

Senate Floor Amendment # 1 to Senate Judiciary Committee Substitute for Senate Rules Committee Substitute for Senate Bill 678 *et al.* relates to voter identification. The amendment changes the distribution of voter identification from taking place before only primary elections, rather than prior to each statewide election, clarifying the same voter identification is to be used for both the primary and general election in a year in which statewide elections are held.

Synopsis of Bill

The Senate Judiciary Committee Substitute for the Senate Rules Committee Substitute for Senate Bill 678 *et al.* addresses a number of issues related to voting and elections including voter identification; ballot counting, processing, and reporting; recounts and audits; registration agents and officers; and compliance with the federal Help America Vote Act of 2002.

As it relates to voter identification, the definitions of voter identification in this bill require that the identification show the name and address of the person but does not require that the address match the voter's certificate of registration. Furthermore, the bill allows that voters present original (written) forms of voter identification or a sworn written statement by the voter of the voter's name, year of birth and unique identifier; provided that the statement of the voter's name also need not contain the voter's middle initial or suffix. This is a considerable change from language in the original bill and does not provide that a verbal statement of the same by the voter be sufficient identification as does SRCS/SB 678 *et al.*

The bill proposes significant changes to the Election Code as it relates to the recheck of vote returns and the recount of ballots (Section 1-1-6 NMSA 1978). A "recheck" is defined in the bill as pertaining to electronic voting systems and meaning a verification procedure where a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic voting system and the results are compared with the results shown on the official returns. The existing statutory definition of a "recheck" is not as specific as the proposed definition in this bill. A "recount" is defined in the bill as pertaining to emergency paper ballots, absentee ballots, provisional paper ballots, optical scan paper ballots, voter verifiable and auditable paper ballots printed by electronic voting systems and any other paper ballots, and meaning a verification procedure whereby the voters' selections on the paper ballots may be counted by hand and the results compared with the results shown on the official returns. The existing statutory definition of a "recount" only pertains to emergency paper ballots and absentee ballots.

As it relates to ballot counting, processing, and reporting, this bill allows for more acceptable forms of votes to be counted, including circling the name of the preferred candidate. The bill includes similar provisions as the bills being substituted.

The bill establishes that only the Secretary of State, and not the counties, is to enter into written contractual agreements with the election data processors and clarifies that the voter registration system be in compliance with the Help America Vote Act of 2002.

The bill defines a "registration agent" as a state or federal employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application and expands the term of "registration officer" to include a state employee performing registration duties in accordance with the National Voter Registration Act of 1993.

Significant Issues

This committee substitute bill does not include the proposed requirement in SRCS/SB 678 *et al.* that at least ninety days before an election, the Secretary of State review statewide computerized voter registration system files for duplicate registrations and notify the voter and update the voter's registration if any duplicate registrations are found, allowing that the Secretary of State correct the state voter file in accordance with federal law in the event that the voter does not respond to the notification.

The bill adds a provision not contained in SRCS/SB 678 *et al.* requiring the Secretary of State to establish procedures for handling voter appeals to the canvassing board for cases in which the county canvassing board makes a decision to reject a voter's ballot.

The bill proposes new material relating to random voting system checks and recounts. The language directs the Secretary of State to select a random sample of one voting system from each House of Representatives district following the general election to compare by hand the voter verifiable and auditable paper trail totals with the voting system totals. In addition, in counties other than class A counties, the county clerk shall select a random sample of one absentee voting system in each absent voter precinct to compare with the totals of the hand recount of the paper ballots from that voting system. In a class A county the county clerk is to designate one voting system as the auditable voting system and the lesser of 3 percent or 500 ballots cast in the absent voter precinct shall be chosen at random to be registered and counted on that voting system. The paper ballots registered on that voting system shall be hand counted and the totals compared with the voting system totals. The check of voting systems is required to occur within three days of the completion of the county canvass. If the totals from the voting system and the paper trail are not equal for an office, the county clerk of the county in which the audited voting system is located shall conduct hand recount for that office in the precincts of the legislative district in which the discrepancy occurred.

The bill proposes a provision to require an applicant for a recount to deposit fifty dollars in cash, or a sufficient surety bond in an amount equal to fifty dollars for each precinct for which a recount is demanded with the proper canvassing board or the Secretary of State. The amendment further requires ten dollars for a similar recheck for each voting machine to be rechecked. The state canvassing board may condition the issuance of the summons on a receipt of a portion of or the full estimated costs of the recount or recheck to ensure sufficient security.

FISCAL IMPLICATIONS

Although SRCS/SB 678 *et al.* includes an appropriation of \$1.5 million for the Secretary of State to carry out the election reforms contained in the legislation, this bill does not contain an appropriation.

ADMINISTRATIVE IMPLICATIONS

The Secretary of State notes contends that mandatory audits of voting systems after elections will increase the duties of staff while they are in the midst of certifying the election.

OTHER SUBSTANTIVE ISSUES

The Secretary of State submits the following substantive issues for consideration. They are listed by section of the bill:

“Section 2: All voters are to present identification for voting not just new residents.

Section 5: Several states now use a unique identifier, the last 4 digits of a voter’s social security number. This Section is aligned with the Help America Vote Act of 2002 (HAVA) provisions for identification.

Section 8: This section conflicts with the requirements of the federal National Voter Registration Act.

Section 19: Pursuant to Section 1-6-4, Subsection B NMSA 1978 the Secretary of State prescribes the voter registration form. This form is being updated to include a perforated receipt for both the voter and the 3rd party with matching numbers and a line for the 3rd party registration agent to sign for tracking purposes.

Section 20: If voter identification is enacted what is the purpose of requiring first time registrants to show identification to register to vote?

Section 41: Third Party Agents, House Bill 266; Sandoval; allows only the applicant to deliver, either by mail or in person, the absentee ballot application to the county clerk. The change was a direct request by the county clerks as many allegations of 3rd party groups not turning in applications to the clerk if they were not of the “correct” party. These applications are not numbered or dated until they arrive at the county clerk’s office. The 48-hour delivery after completion cannot be monitored.

Section 42: Under the provisions of Section 1-6-4 NMSA 1978 this form is prescribed by the federal government.

Section 46: The Secretary of State agrees that identification be required to vote absentee but that the identification be required at the absentee application level.

Section 56: Under Section 1-9-2 NMSA 1978 a voting machine manufacturer must federally certify and independently test their voting machines. These same manufacturers must apply for certification and testing with the Secretary of State prior to June 1st of each odd numbered year. The manufacturer is further required pursuant to Section 1-9-14 NMSA 1978 to pay for the testing and certification of that voting system in New Mexico.

Section 57: Definition Of A Vote. The definition of a vote was added to the Election Code based on court cases and recounts held during the 2000 Gore/Bush presidential election. Section 1-9-4.2 NMSA 1978 clearly defines what constitutes a vote on all paper ballots. The Secretary of State firmly believes that if circles or other marks, other than what is currently in statute, are allowed on a ballot, poll officials will try to determine voter intent. No one other than the voter can determine what the voter intended on the ballot.

Section 60: This proposal is already covered under the provisions of the Help America Vote Act.

Section 68: This amendment will delay county and state canvassing and certification of elections.

Section 73: This section raises concern over the funding to pay for an audit and possibly a recount. House Voters and Elections Committee substitute for House Bill 1063 includes language for such an audit contingent on legislative funding. HVEC CS for 1063 also specifies that an audit be conducted only in a general election and for the office of president or governor.

Language on Page 86, Line 17 also raises concern as the audit does not provide for any deviation in the tally of votes cast on a voting system versus the paper trail. HVEC CS 1063 provides for an error rate of 1.5%.”

ALTERNATIVES

House Bill 742 proposes that election reform be analyzed during the interim allowing for more input from voters and others concerned with needed election reform.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Election reform will be postponed.

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