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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/9/07  
 LAST UPDATED 2/24/07      HB \_\_\_\_\_

SPONSOR    SRC \_\_\_\_\_

SHORT TITLE    Automatic Recount in Certain Elections      SB 449/SRCS

ANALYST    Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$500.	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 698

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$500.		Recurring	Automatic Recount Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Attorney General's Office (AGO)  
 Secretary of State

### SUMMARY

#### Synopsis of Bill

The Senate Rules Committee Substitute for SB 449 would provide a requirement for automatic recounts of any federal or state election where the margin of victory is less than one-half of one percent of the total votes cast. The bill lays out requirements for the Secretary of State to implement those recounts and a means of forcing compliance by authorizing the use of

Mandamus. It also creates a means of funding through the establishment of an election recount fund and an initial appropriation for FY08 of \$500,000.00. Any unspent funds up to \$1,500,000.00 would remain in the Recount Fund and would not revert to the General Fund. However, any unspent excess over \$1,500,000.00 would revert to the General Fund.

The Committee Substitute is different from the original bill because it: (a) makes the bill applicable to state candidates, (b) removes the county clerks from the initial notification process; (c) deletes the requirement that the Secretary of State create new rules; (d) makes the automatic recount process follow existing statutes in the Election Code; and (e) updates the ballot terminology in Section 1-14-16.

### **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 revert to the GENERAL FUND.

According to the Secretary of State, the amount of a recount would be approximately \$800 thousand.

#### 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**

1. The language switch from “statewide” to “state” candidates may mean that all legislative, PRC commissioners, district judge races will be subject to the automatic recount bill.
2. The removal of the county clerks from the initial notification process creates some uncertainty when the automatic recount process will commence (i.e. after the State Canvassing Board approves the returns three weeks after Election Day?)
3. As noted in the original analysis, the bill would create an initial appropriation of \$500,000.00 for FY08. There is no known figure as to how much a recount would cost or how many would be required in any given period of time. There is no language to address what would happen if there were multiple recounts in an election cycle and the available funds were depleted.

According to the AGO, the bill would create an initial appropriation of \$500,000.00 for FY08. There is no known figure as to how much a recount would cost or how many would be required in any given period of time. There is no language to address what would happen if there were multiple recounts in an election cycle and the available funds were depleted. Also, the bill does not address whether or not the \$500,000.00 appropriation is to be made each and every year or only in years with an election cycle applicable to the specific requirements of this bill – namely when New Mexico has a federal or statewide election.

## **TECHNICAL ISSUES**

The AGO also notes the following:

Other sections of the Election Code deal with recounts in various ways and some of the language may need to be reconciled with other provisions of the code. For example, § 1-14-14 defines who may apply for a recount. This bill should perhaps include language indicating that this new automatic refund provision is a stand alone process.

Much of the specific issues can be addressed by rule however:

1. Special mention should be made of recounting or rechecking hand counted ballots to be sure they are part of a recount. With the new paper ballot system, a larger amount of “hand tallying” occurs.

## **OTHER SUBSTANTIVE ISSUES**

The Secretary of State notes strong support of this bill citing that it provides greater voter confidence in outcomes in close elections.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates HB698, HB698 and SB449 when originally introduced were duplicates but the substitute makes the bill applicable to state candidates, removes the county clerks from the initial notification process; deletes the requirement that the Secretary of State create new rules; makes the automatic recount process follow existing statutes in the Election Code; and updates the ballot terminology in Section 1-14-16.

## **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/mt