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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-09

SPONSOR King LAST UPDATED _____ HB 698

SHORT TITLE Voting System Maintenance and Support SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$665.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Finance and Administration (DFA)
 Secretary of State (SOS)
 New Mexico County Clerks Affiliate (NMCCA)

SUMMARY

Synopsis of Bill

House Bill 698 appropriates \$665 thousand from the general fund to the Secretary of State for the purpose of maintaining, updating and supporting the voting systems owned by the state pursuant to Section 1-9-20 NMSA 1978. House Bill 698 excludes voting systems purchased with state or federal funds in calendar year 2006 from the custody and care of the county clerk pursuant to NMSA 1978, Section 1-9-12 (1953, as amended through 2001). Instead, the bill provides that such systems will be owned and maintained by the state and placed in the custody of the county using the voting system. The county would be required to safely store the systems pursuant to guidelines issued by the secretary of state and would be responsible for storage costs.

FISCAL IMPLICATIONS

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

The appropriation of \$665 thousand contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund.

In 2005 the New Mexico Legislature enacted a law which required a paper ballots to be used in all elections within the state. At that time, reports the County Clerks Affiliate, only 11 counties used paper ballots for their elections and the other 22 counties used a mix of electronic voting equipment supplied by several vendors. The action of the legislature rendered several million dollars worth of federally and state certified electronic voting systems useless, with several million dollars still owed to the Board of Finance for loans to purchase the electronic voting systems. Furthermore, the vendor selected by the state, ES&S, for the paper ballot voting systems was not the vendor used in the 11 counties that were using paper ballots, so even the machines in those counties were rendered useless.

The new vendor, ES&S, has a monopoly within the state, controlling the statewide voter registration file, the campaign reporting program and all voting equipment. Due to the proprietary nature of the software, there is no incentive for the company to offer competitive pricing on maintenance agreements or training for technicians. As a result, explains the County Clerks Affiliate, counties have seen their proposed yearly maintenance costs rise to prohibitive levels. For example, in Bernalillo County cost is approximately \$331.7 thousand; Dona Ana it is approximately \$79.8 thousand; and in Santa Fe cost is \$69 thousand. Even counties like Luna, Quay, Roosevelt and Lincoln with relatively few machines are assessed at \$10-15 thousand. The total cost to all counties in the contract is over \$1 million per year. The cost of a brand new machine is \$5 thousand. Conceivably, 133 new machines could be purchased for the same amount as the maintenance agreement this bill appropriates for.

Recently, explains NMCCA, ES&S proposed another contract with the state to provide the required training to our voting machine technicians. In this proposal, which covers training for only two technicians in a county, the training is inexplicably related to the number of machines within a county. The minimum cost to for the entire state to have adequately trained technicians would be over \$330 thousand per year and the actual cost, using adequate technicians in the field on Election Day, would likely approach \$500 thousand.

In regard to the previous equipment used by the counties, it was more financially reasonable to maintain because the vendors were competitive. Since the switch to this new voting system, the cost of elections in New Mexico has increased from \$1.2 million per election to more than \$5 million per election.

SIGNIFICANT ISSUES

As House Bill 698 provides that the voting systems will be owned and maintained by the state but in the custody of the county, certain responsibilities relating to the systems are blurred. For example the AGO points out that it is unclear which entity will contract with voting system technicians pursuant to NMSA 1978, Section 1-9-13 (1953, as amended through 2001).

Other issues highlighted by the AGO include:

- The bill requires the county to store and pay the storage costs of the voting systems, but the systems are state owned.

- A county could acquire subsequent voting systems pursuant to Section 1-9-5. In this situation, the county would have some voting systems in its custody subject to the care and custody requirements of Section 1-9-12 and would have other voting systems in its custody, subject to storage guidelines issued by the secretary of state, as provided for in the bill.
- The bill provides for the voting systems to be placed in the custody of the county but does not specify who is responsible for their transportation to and from polling places, for programming the systems, and other responsibilities outlined in Section 1-9-12.

OTHER SUBSTANTIVE ISSUES

The Secretary of State asked counties to accept ownership of the state-purchased systems including payment on a maintenance agreement. Some counties have agreed while others have not. Those who have not raise a concern that the legal authority cited by the Secretary of State applies to lease-purchase contracts executed between BOF and county commissioners, and the paper ballot systems were not procured in this manner. Instead, the state, with the help of HAVA funds, directly purchased machines from ES&S.

Also problematic is that the original purchase agreement with ES&S excluded a maintenance agreement. Other states purchasing equipment from ES&S not only negotiated agreements but earmarked HAVA funds to pay its maintenance agreement over multiple fiscal years.

Lack of a maintenance agreement is cause for concern. PCMCIA Cards, or memory cards, used with the M100 tabulator to track every vote cast by every voter and tally them at the end of the day, should the cards fail, votes would have to be hand counted and/or service, parts and equipment would have to be purchased on the spot.

ALTERNATIVES

Return to electronic voting systems.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Secretary of State, if this bill is not enacted:

- Ownership of the voting machines purchased in 2006 shall remain undetermined.
- The Federal HAVA Audit shall remain unsatisfied
- The hardware, software, firmware maintenance shall remain as an unfunded mandate.

POSSIBLE QUESTIONS

How many years of maintenance will the appropriation in this bill cover?

Without a maintenance agreement how much does ES&S charge for repairs?

EO/mt