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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/09

SPONSOR Vaughn LAST UPDATED 03/15/09 HB 788/aHVEC/aHJC

SHORT TITLE Unauthorized Removal of Election Signs SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below	Unknown See Below	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Public Safety (DPS)
 Secretary of State (SOS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committees amendment to HB 788, as amended deletes the requirement that the authorization of the property owner be in writing.

Synopsis of HVEC Amendment

The House Voters and Elections Committee amendment to HB 788 removes language allowing a person to deface, alter, mar, mutilate, obliterate, injure, detach, remove or in any way destroy a campaign sign unless such action takes place more than ten days following the election to which the campaign sign relates.

The HVEC Committee Report # 2 does not appear to relate to HB 788.

The amendment adds that this bill shall not apply to the removal of a campaign sign by a state or local public officer if the placement of the campaign sign is in violation of state or local law, regulation or ordinance. The amendment reinserts that a sign may be removed more than ten days following the election to which the campaign sign relates.

Synopsis of Original Bill

House Bill 788 proposes new language regarding the unauthorized removal or defacing of election signs that would include petty misdemeanor penalties for first offenders and misdemeanor penalties for second and subsequent offenders. The act states that no person shall in any manner without authorization knowingly or intentionally deface, alter, mar, mutilate, obliterate, injure, detach, remove or in any way destroy a campaign sign unless such action takes place more than ten days following the election to which the campaign sign relates.

The new act also includes definitions of the following terms:

- Authorization is defined as the written permission of the owner of the property, the candidate, or the sponsor or person responsible for the siting of the campaign sign.
- Ballot measure is defined as a contested election other than the election of an individual for federal, state, regional or local political office. This definition would also include constitutional amendments and referenda.
- Campaign sign is defined as any poster, sign, bumper sticker or other visual device advocating for or against an election candidate or ballot measure.

Any person who violates the provisions as a first offense will be guilty of a petty misdemeanor and shall be sentenced to the provisions of Section 31-19-1 NMSA 1978. A person convicted for a second or subsequent offense will be guilty of a misdemeanor pursuant to the same section as noted above.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

SIGNIFICANT ISSUES

The SOS notes that they do not have jurisdiction over the removal or defacing of election signs in New Mexico. This bill will affect local governments zoning departments who will be responsible for enforcing sign size, placement, removal or defacing of election signs.

AGO provided the following:

The bill as drafted does not provide any exemption from its provisions for cases of necessity, such as construction projects or compliance with any other provision of New Mexico law. For example, NMSA 1978, §§ 67-8-9 – 67-8-11 prohibit the placing of signs of any kind on highway rights of way under certain circumstances. Section 67-8-12 charges law enforcement officers with enforcing these prohibitions. Removal of a campaign sign placed in violation of Sections 67-8-9 – 67-8-11 should not result in criminal liability on behalf of that police officer.

Additionally, the bill as drafted would technically require the owner of property on which a sign has been posted, the candidate whose sign has been posted, and the sponsor of a candidate who is responsible for posting a campaign sign to get written permission before removing the campaign sign. While those individuals would likely have implicit authority to remove a campaign sign, it would seem to be a fairly straightforward matter to exempt them from the prohibition in the first instance.

ADMINISTRATIVE IMPLICATIONS

AOC states there may be an administrative impact on the courts as the result of an increase in caseload and in the amount of time necessary to dispose of cases.

DW/mc:mt