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FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/07

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Enhance Felony Sentences SB 4

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Unable to determine	Unable to determine	Recurring	Current School Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney Generals Office (AGO)

No Response Received From

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 4 states that when a jury finds that a felony committed by a public official “relates to, arises out of or is in connection with” public office, the sentence may be increased by an

additional fine not to exceed the salary and benefits paid to the offender after commission of the first act that was the basis for the felony conviction.

FISCAL IMPLICATIONS

The additional penalties would be considered a “fine”, and would be directed into the Current School Fund pursuant to Article XII Section 4 of the New Mexico Constitution.

Any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle increase. The unusual fine provision can be expected to encourage those prosecuted under this provision to seek trial or otherwise defend the charge or charges even more vigorously than they would otherwise, adding some unknown burden to the court system. However, it is unlikely that this sentence enhancement for public corruption cases will apply to a broad number of cases in any given year, reducing the likelihood of any significant impact on the courts’ fiscal operations.

SIGNIFICANT ISSUES

The Governmental Conduct Act, NMSA 10-16-4 1978 comp. provides that a public officer or employee taking an official act for the purpose of enhancing a financial interest is guilty of a fourth degree felony. Further, NMSA sections 30-23-1 to 30-23-7 also impose criminal penalties for certain acts committed while holding public office or employment. However, the enhanced penalty provisions of this bill are not contingent upon conviction of crimes regulating official conduct which are already in law. The terms “relates to, arises out of, or is in connection with” the offender’s holding of an elected office may be deemed vague as not specifying the conduct which might lead to the enhanced penalties.

[Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 \(2000\)](#): states “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a **jury**, and proved beyond a reasonable doubt.”

Conceivably, defense counsel could argue that a separate hearing is required before the additional penalty could be imposed.

The bill only applies to offices covered by the Campaign Reporting Act, NMSA 1-19-25 to 1-19-36 1978 comp. That act applies to “any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections”. NMSA 1-19-26 H. Technically, the Campaign Reporting Act governs *elections* for certain offices, but does not govern the conduct of the officials within those offices.

ADMINISTRATIVE IMPLICATIONS

There may be a minimal administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

TECHNICAL ISSUES

The bill does not provide for convictions on multiple counts. It refers to the value of the salary and fringe benefits paid after the “commission of the first act that was the basis for the felony conviction”. If separate acts lead to separate convictions, the “value” of the salary and fringe benefits could conceivably be multiplied under the language of this bill. This may be an ambiguity that should be addressed expressly in the bill. The penalty described in the bill would be in addition to any existing statutory penalties.

Presumably the State Department of Finance and General Services Department would have to value fringe benefits and provide that information to the convicting Court. This could present an added complication.

ALTERNATIVES

Because of the difficulty in determining the “value” of salary and fringe benefits paid, the commission of a felony relating to holding public office could be considered an “aggravating circumstance”, and the court could be given discretion to impose an additional penalty based upon doubling or tripling the statutory penalty for the given offense. Those penalties are already set forth in NMSA 31-18-15 1978 comp.

The bill could also expressly amend current sections of law prohibiting conduct by officials and employees to enhance the penalties specified in those laws.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Those convicted of a felony related to corruption in public office will remain subject only to the punishments provided for the felony and will not face the prospect of an additional fine up to the amount of pay and benefits paid to the office holder from the time of the first act resulting in the conviction.

EO/csd