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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/08

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Public Official Felony Sentencing Enhancement SB 338

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Secretary of State (SOS)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

No Responses Received From

Governor's Office
 Attorney General's Office

SUMMARY

Synopsis of Bill

Senate Bill 338 adds a new section to the Criminal Sentencing Act stating when a separate finding of fact by the court or jury shows beyond a reasonable doubt that an offender is a public official and that the felony conviction relates to, arises out of or is in connection with the offender's holding of an elected office, the basic sentence may be increased by an additional fine not to exceed the value of the salary and fringe benefits paid to the offender, by virtue of holding an elected public office, after the commission of the first act that was a basis for the felony conviction. The proposed legislation defines a "public official" as a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act.

FISCAL IMPLICATIONS

NMSC states there would appear to be limited impact on state agencies due to the population effected by this change in the law.

AOC states there will be 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 the need for separate findings of fact as detailed above.

AODA notes that the proposed legislation carries with the possibility of putting money back into the public coffers by penalizing public officials who criminally abuse the publics' trusts. AODA states even small penalties are not insubstantial in the aggregate, and it gives the proposed legislation the benefit of being once of the few that hopefully helps restore public confidence in the overall integrity of elected officials.

SIGNIFICANT ISSUES

AOC states the proposed legislation permits an additional fine to be imposed up to the value of the salary and fringe benefits paid to the offender, by virtue of holding an elected public office, after the first act that was a basis for the felony conviction.

AODA states the most significant factor is that the proposed legislation addresses public corruption in a very direct and understandable way for most citizens and voters. The proposed legislation will show the public the ways in which the legislature and law enforcement are trying to discourage and punish abuse of the public trust.

AODA states that frequently those individuals with deep pockets accused of public corruption or any sort of serious felony will have spent substantial sums of money to mount a good defense. The end result is that upon conviction, even if the jury makes the necessary factual findings, the offender is unable to pay the levied fines. AODA states an alternative worth considering would be to allow an enhancement of the convicted public official's sentence via either additional fines or prison time or both.

PERFORMANCE IMPLICATIONS

AOC states the proposed legislation may have an impact on the measures of the courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

AOC states new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources.

TECHNICAL ISSUES

AOC notes there is no definition of "fringe benefits paid" in the proposed legislation.

AODA states that the Uniform Jury Instructions/Criminal Committee will need to work on drafting a special jury instruction for submission in those cases where this new enhancement is applicable. If the committee is unable to do so promptly, then prosecutors around the state, especially those who deal with white-collar type cases, will need to be aware of the new legislation and coordinate work on a uniform special instruction themselves to lessen the likelihood of post-conviction appellate issues.

OTHER SUBSTANTIVE ISSUES

AODA notes that recent successful prosecutions of narcotics detectives, county managers, and the like, should stand as stark reminders that it is not just elected officials who have been abusing the public's trust while collecting a paycheck financed by taxpayer dollars.

ALTERNATIVES

AODA notes the following alternatives:

1. Broadening the legislation to include non-elected public officials, such as those in supervisory and managerial positions, those who deal with the collection, deposit, and securing of public monies;
2. Not passing the legislation at all;
3. Amending the legislation to allow for the enhancement of sentences of convicted offenders using either additional fines or additional prison time or both;
4. broadening the legislation as proposed in both the first and third alternatives above; or
5. Watering down the legislation by providing for less stringent fines than are present in the current version of the proposed legislation.

RPG/mt