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FISCAL IMPACT REPORT

SPONSOR Little **ORIGINAL DATE** 03/03/11
LAST UPDATED 03/03/11 **HB** 350

SHORT TITLE Removal of Elected Official Upon Conviction **SB** _____

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 378, HB 480, SB 247 and SB 259

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Auditor (OSA)

State Treasurer's Office (STO)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 350 provides for removal of elected officials from office upon conviction in a state or federal court of a "felonious or infamous crime."

The bill would take effect on June 17, 2011.

FISCAL IMPLICATIONS

No fiscal impact was noted by the responding agencies.

SIGNIFICANT ISSUES

The AGO states the bill appears to duplicate existing law. N.M. Stat. Ann. § 10-1-2 already provides:

No person convicted of a felonious or infamous crime, unless such person has been

pardoned or restored to political rights, shall be qualified to be elected or appointed to any public office in this state.

The AGO recently relied on this specific statute to remove PRC Commissioner, Carol Sloan, from office after she was convicted of a felony. The AGO filed a petition in the NM Supreme Court which the Court granted.

OSA notes that the bill adds language to clarify that an elected official is deemed to have resigned from that official's elected office upon conviction of a "felonious or infamous crime." Section B authorizes the Attorney General to initiate an appropriate judicial proceeding requesting a determination that the office is deemed vacant. A new Section of Chapter 31 NMSA 1978 is added directing the judge presiding over a case where an elected official is convicted of a "heinous or infamous crime" to declare that the elected official is no longer eligible to hold public office, that the elected official is deemed to have been removed and that the elective office is deemed vacant.

The OSA suggests that the terminology "heinous and infamous" should either be replaced or defined, as follows:

The "felonious or infamous crime" language in the bill presumably tracks the previous language of Article VII, Section 1 of the New Mexico Constitution. That section previously read that persons "convicted of a felonious or infamous crime" are not qualified to vote. Correspondingly, Article VII, Section 2 of the New Mexico Constitution provides that only legal residents of New Mexico and "qualified electors" may hold elective public office.

Constitutional Amendment 3, approved by voters in the 2010 General Election, amended Article VII, Section 1 to read, in part, the following: "Every person who is a qualified elector pursuant to the constitution and laws of the United States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, except *as restricted by statute either by reason of criminal conviction for a felony* or by reason of mental incapacity . . ." (Emphasis added). Since the language of Article VII, Section 1 has changed, and because the bill does not define "infamous crime," the language of the bill should probably track the new amended language of Article VII, Section 1. If the "infamous crime" language is kept in the bill, "infamous crime" should be defined.

OSA also points out that the presiding judge in a federal case might not be obliged to follow the requirement laid out in the bill.

ADMINISTRATIVE IMPLICATIONS

It is unclear whether the Attorney General already has the authority to initiate an appropriate judicial proceeding requesting a determination for declaring the elected office vacant pursuant to Section 8-5-2 NMSA 1978.

OSA suggests that the bill allows for a "smoother process for replacing convicted public officials."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 350 relates to the following bills:

HB 378 and HB 480, which are anti-corruption bills that amend the Governmental Conduct Act and other criminal statutes to increase the penalties for certain public corruption offenses.

SB 247 and SB 259, which provide for forfeiture proceedings of state pension benefits against government employees convicted of a state or federal felony involving the misuse of public monies arising out of conduct related to a member or retired member's public employment.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current process of dealing with convicted elected officials will continue.

MA/svb:mew