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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR Cook LAST UPDATED _____ HB 210

SHORT TITLE Removal of Public Officials From Office SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0 - \$50.0 per occurrence			Recurring	Voting System Revolving Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

No response from the Secretary of State

SUMMARY

Synopsis of Bill

HB 210 amends Section 10-1-2 NMSA 1978 by providing that any public official (both elected and appointed) "shall be deemed to have resigned from the public office immediately upon conviction."

The bill further provides that a public official's campaign fund shall be subject to forfeiture and deposited in the voting system revolving fund.

The bill defines "public office" as (1) any elective office in the state, (2) the office of a cabinet secretary, or (3) an appointed position on a public board or commission.

FISCAL IMPLICATIONS

A more appropriate fund may be the Public Election Fund, as opposed to the Voting System Revolving Fund. However, the AG notes that the bill raises questions if campaign contributions, which constitute protected first amendment speech, can be subject to seizure by the State.

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Under New Mexico’s public campaign-financing system, a former PRC commissioner convicted of a felony received more than \$101 thousand in taxpayer money to run for the office.

PERFORMANCE IMPLICATIONS

The purpose of the State’s Forfeiture Act is *also* to “...protect the constitutional rights...of innocent persons holding interests...subject to forfeiture.”

SIGNIFICANT ISSUES

Current law provides that “...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 bill makes a technical correction that does not change the intent of this law.

The second portion of the bill would, after the event above, require all campaign funds to be subject to forfeiture, and if forfeited, deposited into the voting system revolving fund.

TECHNICAL ISSUES

The AGO states the bill does not distinguish between state campaign funds and federal campaign funds. Seizing federal campaign funds would violate federal preemption.

OTHER SUBSTANTIVE ISSUES

Under Article VII, § 1, of the New Mexico Constitution, the New Mexico Supreme Court has recently held that the removal of an elected official becomes “effective upon the entry of the district court's judgment of [felony] conviction.” State ex rel. King v. Sloan, 149 N.M. 620, 623 (2011)

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

With regards to removal of elected officials, the bill does not alter existing law.

AHO/lj:amm