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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/12
SPONSOR Payne **LAST UPDATED** _____ **HB** _____

SHORT TITLE Felonies by Public Officers **SB** 197

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
NFI	Indeterminate*	Indeterminate*	Recurring	Current school fund

(Parenthesis () Indicate Revenue Decreases)

*See Fiscal Implications

Related to HB 111

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Secretary of State (SOS)

State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 197 is anti-corruption legislation that provides for an additional penalty when an elected or appointed public official is convicted of a felony which arises out of, relates to or is in connection with the public office held. The basic sentence of that official may be increased by an additional fine not to exceed the value of the salary and fringe benefits paid to the official by virtue of the public office held.

“Public official” in SB 197 means a person elected or appointed to an office covered by the Campaign Reporting Act. Those offices are those state offices in a general or statewide special election, including all statewide offices and county and judicial retention elections, but excluding municipal, school board, and special district elections (e.g. conservancy districts, flood control districts).

FISCAL IMPLICATIONS

Upon a court's imposition of a fine, any monies collected would be credited to the current school fund pursuant to section 34-6-37, NMSA 1978. The amount of such credits cannot be determined at this time, and thus the fiscal impact is indeterminate, as shown in the table above.

SIGNIFICANT ISSUES

The AGO expresses concern over the language that triggers the additional penalty for convicted public officials:

The meaning of "relates to, arises out of or is in connection with the offender's holding of an elected office" is unclear. This ambiguity creates a potential constitutional problem under the doctrine of "void for vagueness." As the US Supreme Court has held, due process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal, for "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." United States v. Harriss, 347 U.S. 612, 617 (1954). See also Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

This bill should follow what other public corruption bills introduced this year in the legislature have done: specifically enumerate the offenses that are subject to the enhanced penalty. HB 111 (enhanced penalty for violation of eight enumerated public corruption statutes); HB 170 (separate division for prosecuting ten enumerated public corruption statutes).

The SPO raises an issue about the disposition of any fines that may be collected:

If the intent of SB197 is to essentially restore the monies and benefits the public official earned after violation of the law in connection with the public officer's duties it would be recommended to change the additional penalty from a "fine" to "restitution". If SB197 was amended from imposing a fine to restitution, an amendment may be required to NMSA §31-17-1, definition of victim to expand the definition from "a person" to "a public office" or "state agency".

The SPO also questions the meaning of "salaries and fringe benefits" used in the bill, at least as to state officials:

It is not specified which fringe benefits are included: the public employer's contribution toward retirement or the employer and employee's contribution amounts, the public employer's contribution towards medical benefits, the employer's contribution towards federally mandated FICA/Medicare payments, paid time-off (sick, annual and holiday leave), etc. If paid time off is included, it is unclear if the offender would have to forfeit unused leave or pay an amount equal to all accrued and used paid time-off.

The SPO continues:

It is unclear on what impact the total value of the fine would have on interest earned and paid taxes. If the employee participated in a federally mandated Premium only Plan (POP) that allows for the deferral of taxes, and was later fined an additional amount not to exceed the value of the salary and fringe benefits, there is a possibility that the offender could end up paying a pre-tax amount greater than the value of the original salary and benefits.

RELATIONSHIP

SB 107 is related to HB 111, which provides for forfeiture of pension benefits by public officials convicted of public corruption.

MD/svb