

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13

SPONSOR Cook LAST UPDATED _____ HB 203

SHORT TITLE Removal from Public Office for Felonies SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal					Voting System Revolving Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 238, Relates to SJR 6

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Attorney General (AGO)

Public Defender Department (PDD)

Administrative Office of the Courts (AOC) on SB 238

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 203 makes changes to NMSA 1978, Section 10-1-2 (Public Office - Conviction of Crime) to provide that a person who is convicted of a felony while in public office shall be deemed to have resigned from that office immediately upon conviction and the office will be deemed vacant.

All funds belonging to that person's campaign committee then shall be subject to forfeiture to the voting system revolving fund.

"Public office" is defined to mean any elective office, any cabinet position, or any appointed position on a public board or commission.

FISCAL IMPLICATIONS

Revenue may accrue from forfeited campaign committee funds to the voting system revolving fund, but the amount will be dependent upon removal of public officials and it is not possible to estimate how much the revenue might be. There is also a question (see Significant Issues) as to whether such forfeiture is constitutional.

SOS notes that the voting system revolving fund funds the purchase of voting equipment.

For the AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additional potential fiscal impact on the judiciary would be proportional to the increased arrests cases filed due to enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The AOC states: “Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.

SIGNIFICANT ISSUES

HB 203 seeks to correct a problem that occurred when a PRC Commissioner was convicted of a felony but refused to leave office, resulting in the AGO having to bring suit to remove her from office.

The AGO stated that the NM Supreme Court subsequently held that pursuant to Article VII, § 1, of the N.M. Constitution, 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).

Therefore, with regard to elected officials, this bill is redundant because of the court’s ruling in Sloan. HB 203 also makes automatic the removal of public officer, not just elected officials, who are convicted of a felony.

The second part of the bill regarding forfeiture of campaign funds raises questions under the First Amendment, since according to AGO, such contributions, constitute protected First Amendment speech. This raises the question as to whether they be seized by the State in the case where a public official is removed from office because of a felony conviction.

SOS states that it “supports the public policy regarding the forfeiture of campaign funds upon a felony conviction.”

PERFORMANCE IMPLICATIONS

The AOC states that the courts are participating in performance-based budgeting. This bill may have an impact on the performance measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type.