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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13

SPONSOR Moores LAST UPDATED 02/27/13 HB _____

SHORT TITLE Removal from Public Office for Felonies SB 238/aSRC

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	NFI			General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 203 (no longer duplicates), relates to SJR 6

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment adds more specificity to the bill by defining what type of felonious crimes would cause removal from a public office, namely, a capital, first or second degree felony.

It also adds new language to repeal Section 31-13-1 (NMSA 1978) that relates to felony conviction and restoration of citizenship for any person convicted of a felony. Repeal of this section removes 1) the restoration of voting rights for convicted felons following the completion of sentences or having received a pardon; 2) the related procedures for certifying completion of sentence in order to restore full rights of citizenship; and 3) the prohibition against felons holding office unless they have certification and a pardon granted by the governor.

AGO analysis of the amended bill notes that the amendments change the scope of the SB 238 by allowing for those convicted of third or fourth degree felonies to hold public office.

- Article VII Section 2 of NM Constitution, not statutory law, governs the automatic

removal of elected officials. Therefore, this bill does not affect the automatic removal of elected officials who have been convicted of any felony.

- With regard to public officials who have been appointed to either a cabinet secretary position or a board or commission, these amendments narrow the original bill by allowing these appointed officials to continue public service if they have been convicted of either a third or fourth degree felony (as opposed to any felony).
- The amendments also narrow current law by allowing a person to be appointed as a cabinet secretary or a board or commission member—even though the person has been convicted of a third or fourth degree felony. Under current law, this person would be ineligible for appointment because current law bans all convicted felons from being appointed.
- Third and fourth degree felonies encompass serious crimes. For example, manslaughter, child abuse, distribution of child pornography, and some sexual crimes against children are third degree felonies, as are human trafficking and embezzlement under \$20,000. Finally, possession of child pornography is a fourth degree felony. Thus, one of the unintended consequences of the amendments is that they allow persons convicted of serious felonies to serve as cabinet officers and on boards or commissions. (To give an extreme example, a convicted child abuser could be qualified to serve as Secretary of the Children, Youth and Families Department.)
- Art. VII, Section 1, of the NM Constitution authorizes the Legislature to limit the right to vote “by reason of criminal conviction for a felony.” Accordingly, Section 31-13-1 NMSA 1978 prohibits felons from voting but automatically restores their voting rights once they have completed their sentence or received a pardon by the Governor after completing their sentence.
- However, Art. V, Section 6, of the NM Constitution authorizes the Governor to grant pardons. And while the Constitution authorizes the Legislature to regulate the procedure for issuing pardons, the ultimate power and unfettered right to grant pardons belongs to the Governor. Ex parte Bustillos, 26 N.M. 449 (1920). Therefore, repealing Section 31-13-1 NMSA 1978—which the SRC amendments do—has no legal effect on the Governor’s constitutional power to grant pardons; once the Governor unconditionally pardons a felon, that felon has the right to vote and run for elected office.
- However, repealing Section 31-13-1 NMSA 1978 does repeal the automatic restoration of voting rights for felons once they complete their sentence.

AOC analysis also states SB 328 as amended is broader in scope than the original intention of SB328 owing to Section 2’s repeal of Section 31-13-1 (NMSA 1978). The amended bill eliminates options for restoration of voting rights for *all* felons and of the possibility that a convicted felon, under any circumstance, could hold an office of public trust at any level of government.

Synopsis of Original Bill

Senate Bill 238 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 general 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 general 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.

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

SB 238 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, § 2, 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. SB 238 also makes automatic the removal of public officials, 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.

AMENDMENTS

The bill could provide that automatic removal would occur only after exhaustion of a right to an appeal.

CAC/bm