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### FISCAL IMPACT REPORT

SPONSOR:	Fidel	DATE TYPED:	02/14/00	HB	
SHORT TITLE:	Salary Increases for Elected State Officers			SB	233
				ANALYST:	Gonzales/Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY 01		
	\$ 250.3			Rec	GF
			\$ 21.9	Rec	Land Maintenance

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

### SOURCES OF INFORMATION

LFC files

Attorney General

Department of Finance and Administration

Office of the Secretary of State

Office of the State Auditor

NM Public Regulation Commission

## **SUMMARY**

### Synopsis of Bill

SB 233 provides for a salary increase for executive elected officials: governor, secretary of state, state auditor, state treasure, attorney general , commissioner of public lands and public regulation commissioners. All increases are effective in FY01, except for the governor's increase, which would be effective on January 1, 2003.

### Significant Issues

According to the Attorney General's (AG) analysis, the salary increase (except for the governors) are effective during the presently-serving officers' terms of office. This raises a constitutional question under Article IV, Section 27 of the Constitution of New Mexico. This article and section prohibits midterm salary increases unless the constitution "provides otherwise". The AG's office indicates that a reasonable argument can be made that the constitution "provides otherwise" for all of the elected executive officers named in the bill except public regulation commissioners.

## **FISCAL IMPLICATIONS**

The bill appropriates \$250.3 from the general fund. Assuming a July 1, 2000 implementation date, the actual general fund appropriation needed for FY 01, considering 25 % or 24% in benefits, ( not all elected official

participate in retirement benefits) would be \$200.4. An additional \$21.9 would be required for the land maintenance fund for the Commissioner of Public Lands.

## **TECHNICAL ISSUES**

The bill doesn't specify exactly what date during FY 01 the salary increases would become effective for the elected officials other than the Governor.

## **OTHER SUBSTANTIVE ISSUES**

The AG's office states that the constitution in the "otherwise provided" language allows for this increase. The argument is as follows:

- •that "the compensation" of the executive officers listed in Article V , Section 1 may be increased or decreased by law after the expiration of ten years from the date of the admission of NM as a state. Constitution of New Mexico Article V, Section 12.
- •the position of public regulation commissioner is the only office named in this bill that is not listed in Article V, Section 1 and is not covered by the salary provisions of Article V, Section 12.
- •the provision (Article V, Section 12) does more than authorize the legislature to set executive officer salaries, it arguably falls within the "otherwise provided" language of Article IV, Section 27 and would permit midterm salary changes for the elected executive officials listed in Article V, Section 1
- •the AG's office cites the analysis in Thompson v. Olmstead as providing a reasonable argument in favor of the permissibility of most of the increases.
- •the Thompson case does not foreclose a constitutional challenge to the mid-term salary increases proposed in the bill

JG/WD/sb