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FISCAL IMPACT REPORT

SPONSOR Munoz ORIGINAL DATE 02/07/13
LAST UPDATED _____ HB _____
SHORT TITLE No Felons Holding Elected Office, CA SJR 6
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$ 46.0	Indeterminate	Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 238, HB 203

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Administrative Office of the Courts (AOC)
Secretary of State (SOS)

No Response

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 6 proposes to amend Section 2 of Article 7 of the Constitution of New Mexico to prohibit a felon, whether pardoned or not, from holding elective office.

FISCAL IMPLICATIONS

AOC states: "There will be a minimal administrative cost for statewide update, distribution, and documentation of constitutional changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and challenges to the same. Such proceedings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase."

SOS would need to oversee publication of the constitutional amendment. SOS states, “In the 2012 General Election, the cost of each constitutional amendment was approximately \$46,000. That included publishing the amendments in newspapers statewide, publication of the voter guide, and translation and recording of the proposed amendments in Native American languages for radio broadcast.”

SIGNIFICANT ISSUES

To successfully amend the constitution, a majority of legislators in both the house and the senate must vote in favor of the amendment. The secretary of state must publish the amendment in ways specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next general election.

The qualifications for holding elective public office are set forth in Article VII, Section 2(A), of the NM Constitution, which provides that “[e]very citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any elective public office except as otherwise provided in this constitution.” Article VII, Section 1, of the NM Constitution excludes from the definition of qualified elector anyone “convicted of a felonious or infamous crime...unless restored to political rights.”

This SJR amends Article 7, Section 2, of the constitution of New Mexico to prohibit convicted felons who have been pardoned from running for elective office.

Article V, Section 6 of the Constitution of New Mexico vests the pardoning authority exclusively in the Governor. State of New Mexico Clemency Guidelines provide that, “[w]hen the governor grants a pardon, the pardoned person is restored to the rights of citizenship he or she enjoyed prior to conviction.” (See <http://www.recordgone.com/pardons/New-Mexico-Pardon-Application.pdf>)

AOC states “It appears, that the SJR 6 amendment to Article VII, Section 2, will be in direct conflict with the pardoning authority granted to the Governor under Article V, Section 6. New Mexico statutes do not address the governor’s pardoning authority, save for Section 31-21-17 NMSA 1978, regarding executive clemency and providing that on the request of the governor the parole board shall investigate and report to the governor with respect to any case of pardon, commutation of sentence or reprieve.

- It can be anticipated that there will be an argument that the proposed amendment, in impinging upon and interfering with the governor’s power to fully pardon, constitutes a violation of the separation of powers doctrine, as laid down in Article III, Section 1 of the Constitution of New Mexico, as the ability and discretion to fully pardon, to fully restore a person’s citizenship rights, lies exclusively with the chief executive, the governor, of the executive branch.
- The forms of executive clemency, as set out in the State of New Mexico Executive Clemency Guidelines, are as follows: full pardon, restoring the rights of citizenship enjoyed prior to conviction; commutation of sentence, reducing the punishment imposed by the court; conditional release, releasing an inmate from incarceration subject to parole conditions; reprieve, a form of temporary relief postponing punishment; and pardon to restore civil rights following discharge from supervision, restoring rights of citizenship enjoyed prior to

conviction, excluding the right to bear arms unless otherwise stated.

(Reference <http://www.recordgone.com/pardons/New-Mexico-Pardon-Application.pdf> for additional information.)

SOS also sees the potential for challenge to this constitutional amendment, though on different grounds, stating: “Based on previous litigation, there may be a constitutional issue with applying this requirement to federal offices in New Mexico (U.S. Senate, Congressional Districts 1, 2 and 3).”

However, AGO states “There are no significant legal issues” and disagrees with the assessment of the AOC with regard to separation of powers.

In any case, the constitutional amendment proposed in SJR 6, if enacted, will limit the ability of the governor to grant pardons without restriction.

SJR 6 does not address whether a felon whose conviction has been overturned would be qualified to hold any elective public office.

PERFORMANCE IMPLICATIONS

AOC states that the courts are participating in performance-based budgeting. It appears that passage of this constitutional amendment could lead to increased litigation regarding the appropriate taking of private property and thus may have an impact on the measures of the courts in the following areas:

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

ADMINISTRATIVE IMPLICATIONS

Looking ahead, the SOS states the voter file would not provide an adequate reference for the proper filing officer at the time a candidate files a Declaration of Candidacy, stating:

“Voters who have been convicted of a felony have their voting rights restored when they have been unconditionally discharged from a correctional center or detention center, or completed all conditions of parole or supervised probation, or had the conviction overturned.

If a person who has been convicted of a felony has had his or her voting rights restored, he or she would not be flagged as a felon in the voter file. As such, the voter file would not provide an adequate reference for the proper filing officer (Secretary of State, county clerk or municipal clerk) to determine if the person has a felony conviction at the time of receiving the candidate's Declaration of Candidacy.

However, the candidate would be required to swear under oath on the Declaration of Candidacy that he or she is eligible and legally qualified to hold the office.”