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FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 2/17/16
LAST UPDATED _____ HB 96

SHORT TITLE No Pension for Convicted Public Officials SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 96 enacts a new section of the Public Employees Retirement Act titled "Eligibility Requirements for Public Officials," including definitions. This section states that in order to be eligible to receive a pension, a public official shall not have been convicted of, have pled guilty, or nolo contendere to a corruption offense after the official's first election to a public office.

Portions of the pension that are obligated to satisfy a court-ordered community property interests or child support obligations are not affected by this section. If an official is determined to be ineligible, all amounts contributed by the public official at the time of ineligibility are refunded to the person.

FISCAL IMPLICATIONS

There are no fiscal implications associated with enactment of HB 96.

SIGNIFICANT ISSUES

The AOC states:

“When a public official is convicted of a felony connected to the public office, Section 31-18-15.4(A) provides for a sentence enhancement “not to exceed the value of the salary and fringe benefits paid to the offender.” Under this section, a judge may require an elected official convicted of corruption to repay any salary and benefits accrued after crime was committed.

“Section 31-18-15.4(A), however, applies specifically to corruption related to the elected person’s official duties. HB 96 proposes to expand the law to extend beyond corruption committed while in office to activities undertaken during the campaign and election process, including, for example, misuse of campaign donations.”

The AGO writes:

“There is a danger that the courts would deem this bill an unconstitutional ex post facto law. Both the United States and New Mexico constitutions prohibit ex post facto laws. U.S. Const. art. 1, § 10, cl. 1; N.M. Const. art. 2, § 19. Under these constitutional provisions, penal legislation cannot apply retroactively to increase the penalty of crimes that have already been committed. *E.g., State ex rel. Foy v. Austin Capital Management, Ltd.*, 2015–NMSC–025, ¶ 26, 355 P.3d 1.

“Because this bill is framed as a matter of “eligibility,” one could argue that it is merely “civil and remedial” rather than “penal.” *Cf. Yepa v. State Taxation and Revenue Dept.*, 2015–NMCA–099, ¶¶ 18-35, 358 P.3d 268. The determination of whether an act is “penal,” however, is a multi-factored and nuanced legal analysis. *Id.* Given that loss of benefits would be a direct consequence of conviction, there is a strong possibility that courts would view this bill as penal legislation intended to punish corrupt public officials.

“The bill would clearly be retroactive. Under the bill’s terms, eligibility is based on the date of conviction, not the date of the offense. Further, the bill applies to any convictions dated after the official assumes office, not after the bill is enacted. Thus, it would apply to a public official who committed a covered crime in 2015, for example.

“If the bill is both penal and retroactive, it is unconstitutional. U.S. Const. art. 1, § 10, cl. 1; N.M. Const. art. 2, § 19.

“While this is a significant issue, it does not require a complex resolution. The bill would pass constitutional muster if it makes clear that it applies only prospectively, to crimes committed after its effective date.”

CJ/jo