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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/09  
 LAST UPDATED 2/19/09      HB \_\_\_\_\_

SPONSOR Payne

SHORT TITLE Enhance Felony Sentences For Public Officials      SB 141/aSRC

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender (PD)

Administrative Office of the District Attorney (AODA)

Attorney General's Office (AGO)

### SUMMARY

The Senate Rules Committee's amendment to Senate Bill 141 uses the term "trier of fact" instead of "court or jury".

According to the AGO, by replacing "by the court or jury" with "by the trier-of-fact", the amendment brings the bill into compliance with the New Mexico Supreme Court's decision in State v. Frawley, 172 P.3d 144 (2007) and the US Supreme Court's decision in Cunningham v. California, 127 S.Ct. 856 (2007) which mandate that the trier-of-fact make a separate factual finding beyond a reasonable doubt in order to impose an aggravated penalty.

#### Synopsis of Original Bill

Senate Bill 141 creates a new section in the Criminal Sentencing Act to allow a court to increase the sentence of public official convicted of a felony by imposing a fine no greater than the official's salary and benefits. The bill provides that the court or a jury must make a separate determination that the felony was connected to the offender's holding of an elected office.

## **FISCAL IMPLICATIONS**

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.

## **SIGNIFICANT ISSUES**

The New Mexico Supreme Court's decision in State v. Frawley, 172 P.3d 144 (2007) and the US Supreme Court's decision in Cunningham v. California, 127 S.Ct. 856 (2007) make it clear that under the Sixth Amendment right to a jury trial, an aggravated penalty can only be imposed after the trier-of-fact makes a separate factual finding beyond a reasonable doubt. This bill appears to run afoul of this constitutional holding because it requires a separate finding of fact "by the court or jury".

To comply with Frawley and Cunningham, the bill should replace "by the court or jury" with "by the trier-of-fact".

## **OTHER SUBSTANTIVE ISSUES**

Does not specify for what period of time the salary/benefits are to be measured—is it the annual salary? The total amount the offender has earned while in office? Does not define "relates to, arises out of, or in connection with"—public official commits felony DUI in a state car or while on official business—is that enough of a nexus?

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Currently, most government corruption crimes are only misdemeanors or 4<sup>th</sup> degree felonies. According to the AGO, without this bill, public officials will not have as much of a disincentive to violate government corruption laws.

CS/mt:mc