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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/31/13

**SPONSOR** Cook **LAST UPDATED** \_\_\_\_\_ **HB** 203

**SHORT TITLE** Removal from Public Office for Felonies **SB** \_\_\_\_\_

**ANALYST** Cerny

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal					Voting System Revolving Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 238, Relates to SJR 6

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)

Attorney General (AGO)

Public Defender Department (PDD)

Administrative Office of the Courts (AOC) on SB 238

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

House Bill 203 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 voting system revolving 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 voting system revolving 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.

SOS notes that the voting system revolving fund funds the purchase of voting equipment.

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

HB 203 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, § 1, 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. HB 203 also makes automatic the removal of public officer, 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.