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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Moores LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Removal From Public Office For Felonies SB 287

ANALYST Cerny

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	Indeterminate but minimal	Indeterminate but minimal	Recurring	Children's Trust Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	NFI		Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 316

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 287 amends Section 10-1-2 NMSA 1978 stipulating that a felony conviction of a public office holder results in immediate resignation of the official and forfeiture of campaign funds to the children's trust fund.

Specifically, in Section 1 HB 316 amends sub-section A of Section 10-1-2 NMSA 1978, changing "felonious or infamous crime to "felony" and clarifying that conviction of such a crime would prohibit an individual from being elected or appointed to public office.

It also adds a new sub-section B which stipulates that a felony conviction of a public office holder results in immediate resignation of the official and forfeiture of campaign funds to the.

New sub-section C defines public office as any state elective office, the office of a cabinet secretary or an appointed position on a public board or commission.

## **FISCAL IMPLICATIONS**

AOC analysis states that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additional fiscal impact on the judiciary would be proportional to the increased court filings, which may occur due to enforcement of this law. 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. Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.

Revenue may accrue from forfeited campaign committee funds to the general fund, but the amount will be dependent upon removal of public officials but it is likely to be minimal. There is also a question (see Significant Issues) as to whether such forfeiture is constitutional.

## **SIGNIFICANT ISSUES**

The New Mexico Constitution and not statutory law governs the automatic removal of elected officials. However, this bill would govern removal of other officials for felony convictions, namely cabinet secretaries and those appointed to a public board or commission

AGO analysis states: The New Mexico Supreme Court 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, 2011 NMSC 020, ¶ 13). Therefore, with regards to elected officials, this bill is redundant. However, with regards to other public officials, this Bill provides for the removal of public officers who are convicted of a felony.”

SB 287 does not specify whether the person’s campaign funds are subject to forfeiture whether or not campaign debt exist or after all campaign debts have been paid.

Previous analysis by the AGO on a similar bill stated that the second part of the bill regarding forfeiture of campaign funds raises questions under the First Amendment, since according to the AGO, such contributions constitute protected First Amendment speech. This raises the question as to whether they can be seized by the state in the case where a public official is removed from office because of a felony conviction.

DFA analysis points out that local elective offices are excluded from the definition of public office.

## **RELATIONSHIP**

Near duplicate of HB 316 except that HB316 allocates any forfeited campaign funds to the voting system revolving fund.

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

SB 287 does not alter existing law in regards to the removal of elected officials. However, without this bill, public officials will be able to after being convicted of a felony.

**POSSIBLE QUESTIONS**

Is there a sound policy reason for excluding local elected officials from this bill?

CAC/ds