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FISCAL IMPACT REPORT

SPONSOR SPAC ORIGINAL DATE 3/8/15
 LAST UPDATED _____ HB _____

SHORT TITLE Removal from Office for Felony Conviction SB 90/SPACSC

ANALYST Jorgensen

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Minimal	Minimal	Recurring	Children's Trust Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- Public Regulation Commission (PRC)
- Secretary of State (SOS)

SUMMARY

Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 90 adds a new selection to the Election Code which defines a "felonious or infamous" crime as a capital crime or a first or second degree felony. SB 90CS disqualifies any person convicted of a felonious or infamous crime from holding elected office. Additionally, it 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.

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.

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

SIGNIFICANT ISSUES

SB 90CS 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.

According to AOC, 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.

AOC states that because SB 90CS provides for immediate removal from office upon conviction of a felony, there is no opportunity provided for appeal by a public official before removal from office.

OTHER SUBSTANTIVE ISSUES

AGO analysis of the provisions of SB 90 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, SB 90CS provides for the removal of public officers who are convicted of a felony.”

CJ/je