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FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 2/1/17
LAST UPDATED _____ HB 120
SHORT TITLE Disqualification of Presidential Electors SB _____
ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

House Bill 120 relates to SB42, Agreement to Elect President by Popular Vote; SB54, Agreement to Elect President by Popular Vote; and SB102, Elect President by National Popular Vote.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Secretary of State's Office (SOS)

SUMMARY

Synopsis of Bill

House Bill 120 (HB120) proposes requiring presidential electors who do not vote for the candidate of the party that nominated them to be disqualified and the vacancy filled by the Governor from a list of names provided by the chair of the respective political party.

House Bill 120 repeals Section 1-15-9, NMSA 1978 which requires all presidential electors to cast their ballots in the electoral college for the candidates of the political party which nominated them as presidential electors, and would remove the 4th degree felony penalty for presidential electors who do not vote for the candidate of the party that nominated them.

The bill also amends Section 1-15-8 clarifying the process by which the electors cast their ballots such that the Secretary of State (SOS) shall provide each elector a ballot for President and Vice President. The SOS shall examine the ballots and not count any ballot that is cast for any candidate other than the candidate of the party that nominated the elector. It further states that an elector who refuses to mark or cast a ballot will be disqualified and a new elector appointed by the Governor.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Secretary of State's Office (SOS) indicates it expects no additional fiscal impact related to this legislation.

SIGNIFICANT ISSUES

The Attorney General's Office writes there is no federal law or constitutional provision requiring electors to vote for the party that nominated them, and over the years, a number of electors have voted against the instructions of the voters. Over two dozen states in the country have laws that require electors to cast votes for the winner of their respective state's popular vote, and many also have penalties if the elector is considered "faithless." State laws compelling their electors to vote for a pledged candidate have been upheld by the U.S. Supreme Court, which ruled states have the right to require electors to pledge to vote for the candidate whom their party supports, and the right to remove potential electors who refuse to pledge prior to voting. [Ray v. Blair 343 U.S. 214 (1952).]

The ruling in Ray v. Blair only held that requiring a pledge, not a vote, from electors was constitutional. A dissent in the court opinion stated that "no one faithful to our history can deny that the plan originally contemplated what is implicit in its text – that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the nation's highest offices."

States may require such pledge, but only a few states in the country (e.g., Michigan and Minnesota) have laws which declare a faithless elector's vote as *void* and can treat the elector as though they have resigned. The issue of voiding an elector's "faithless" vote has not yet been considered by the courts, and it is not clear if such action might violate Article II or the Twelfth Amendment of the U.S. Constitution.

RELATIONSHIP

House Bill 120 relates to SB 42, Agreement to Elect President by Popular Vote; SB 54, Agreement to Elect President by Popular Vote; and SB 102, Elect President by National Popular Vote. These bills would enable the states to allow the election of President by national popular vote.

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