

LFC Requester:	Randall Soderquist
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 1/24/13

Bill No: HB 203--305

Sponsor: Rep. Cook

Reviewing Attorney General's Office

Short REMOVAL FROM PUBLIC

fsdfs **Analysis:** Phillip Baca

Title: OFFICE FOR FELONIES

Phone: 827-6000 **Email** pbaca@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 203 amends Section 10-1-2 NMSA 1978 by providing that any public official (both elected and appointed) “shall be deemed to have resigned from the public office immediately upon conviction.”

This bill also provides that the public official’s campaign fund shall be forfeited and deposited in the voting system revolving fund.

The bill defines “public office” as (1) any elective office in the state; (2) the office of a cabinet secretary; or (3) an appointed position on a public board or commission."

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are no fiscal implications for this agency.

SIGNIFICANT LEGAL ISSUES

This bill seeks to avoid the problem that occurred when PRC Commissioner Sloan was convicted of a felony but refused to leave office, resulting in the AGO having to bring suit to remove her from office. Accordingly, the NM 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, 149 N.M. 620, 623 (2011).

Therefore, with regards to elected officials, this bill is redundant because of the court’s ruling in Sloan. However, with regards to other public officials, this bill extends Sloan by also making automatic the removal of public officers who are convicted of a felony.

The second part of the bill regarding forfeiture of campaign funds raises questions under the First Amendment—Can contributions, which constitute protected First Amendment speech, be seized by the State?

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

There are no performance implications for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

There are no administrative implications for this agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

This bill is identical to SB 238.

TECHNICAL ISSUES OR DRAFTING ERROR

There are no technical issues or drafting errors.

OTHER SUBSTANTIVE LEGAL ISSUES

There are no other substantive legal issues.

ALTERNATIVES TO ENACTING THIS BILL

There are no recommended alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

With regards to removal of elected officials, the bill does not alter existing law. But with regards to other public officials, without this bill, public officials will be able to serve as public officials after being convicted of a felony.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

There are no recommended amendments.