

LFC Requester:	Cerny, Charlene
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**AGENCY BILL ANALYSIS
2014 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 February 5, 2014
Bill No: HB316-305 Feb 5

Sponsor: Rep. Zachary J. Cook **Reviewing** Attorney General's Office
Short Removal from Public Office for **Person Writing** Jennifer Armijo Hughes
Title: Felonies **Phone:** 222-9000 **Email** jhughes@nmag.gov

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

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(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
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	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 316 amends Section 10-1-2 NMSA 1978 by providing that an elected or appointed official holding public office shall be deemed to have resigned from the public office immediately upon conviction of a felony. It additionally states that their office shall be deemed vacant.

HB 316 provides that all funds belonging to the person’s campaign committee shall be subject to forfeiture, pursuant to the Forfeiture Act, and deposited into voting system revolving fund.

HB 316 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

N/A

SIGNIFICANT LEGAL ISSUES

The New Mexico Constitution and not statutory law governs the automatic removal of elected officials. 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.

HB 316 does not specify whether the person’s campaign funds are subject to forfeiture; whether or not campaign debt exists or after all campaign debts have been paid.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

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

HB 316 seems to be a copy of SB 287 with the exception of where the public official’s forfeited

campaign funds will be deposited.

TECHNICAL ISSUES OR DRAFTING ERROR

N/A

OTHER SUBSTANTIVE LEGAL ISSUES

N/A

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

HB 316 does not alter existing law in regards to the removal of elected officials. However, without this Bill, other public officials will be able to serve as public officials after being convicted of a felony.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A