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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/09  
 LAST UPDATED 02/13/09    **HB** \_\_\_\_\_

SPONSOR Cravens

SHORT TITLE Seizure Of Certain DWI-Related Vehicles    **SB** 307/aSPAC

ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)  
 Department of Public Safety (DPS)  
 Public Defender Department (PDD)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment permits the district attorneys in each judicial district to file and pursue forfeiture actions pursuant to the subsection amended.

#### Synopsis of Original Bill

Senate Bill 307 requires the seizure of a person's vehicle who is arrested and whose driver's license (DL) was revoked for driving under the influence of intoxicating liquor or drugs or for a violation of the Implied Consent Act. If the person arrested: 1) is the owner of the vehicle, the vehicle is subject to forfeiture, 2) is **not** the owner of the vehicle, the owner may obtain the vehicle upon submission of an affidavit to the Motor Vehicle Division (MVD) affirming that the owner will not allow a person without a valid DL to operate the owner's vehicle. MVD must keep the affidavit with the vehicle's registration records and if the owner again allows a person without a valid DL to drive the vehicle, the owner's vehicle is subject to forfeiture.

## **FISCAL IMPLICATIONS**

The DPS reports that the department would have associated legal cost with drafting the seizure orders and auctioning the actual vehicles. Storage and towing of the vehicle would cause a fiscal impact however the proceeds for the sale of this vehicle could offset the expense somewhat. The Albuquerque Police Department operates a seizure program and has a dedicated attorney to handle the process for the city. The city of Albuquerque reports they generate \$110,000 per month from forfeitures and utilize \$60,000 per month to run the program.

The PDD notes that the fiscal impact would likely be absorbed in the ordinary course of business.

The TRD states that the impact on the Motor Vehicle Division (MVD) could be quite substantial, but at this time it is unclear how MVD would approach implementation of the new records-keeping requirements. Computer system changes associated with linking the use of a vehicle by a DWI violator other than the owner of the vehicle could be quite extensive.

TRD notes further that redesign of the NMLETS response to law enforcement inquiries of vehicle registration will need to be done. MVD will need to record driver restrictions on vehicle registration records and/or vehicle information on the driver's record, so that the arresting officer will know if a vehicle seizure is called for. MVD will have to create and publish the affidavit and establish a mechanism for keeping the affidavit with the vehicle's registration records. MVD will need to develop the form of affidavit the owner will fill out and also develop some type of form to give the owner that will allow the vehicle to be released once the affidavit is received.

The AOC comments that in order for the state to effect a forfeiture, the court must conduct a hearing pursuant to the Forfeiture Act, NMSA 1978, Section 31-27-6. Due to the high number of cases stemming from offenders driving with licenses revoked due to DWI convictions, this addition to Section 66-5-39 may significantly affect court resources.

## **SIGNIFICANT ISSUES**

TRD states:

Seizure, and possible forfeiture, of a vehicle driven by an individual arrested for DWI may serve as an effective additional deterrent to driving under the influence of alcohol or drugs.

Rules will be required to establish procedures, presumably including a tow order and (if the vehicle is not ultimately subject to forfeiture) the owner's responsibility to compensate the towing company, for removal of the vehicle.

When the vehicle owner is someone other than the person arrested, the owner signs an affidavit that the defendant will not drive the vehicle again while revoked for the DWI. There would have to be a notation on the vehicle's registration so that the information comes back on the New Mexico Law Enforcement Telecommunications System (NMLETS) when the officer stops the car again and runs the tags. Otherwise, none of the parties involved will know that the vehicle is now subject to forfeiture.