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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13
LAST UPDATED 2/22/13 **HB** 431/a HCPAC

SPONSOR Harper

SHORT TITLE DWI Vehicle Seizures **SB** _____

ANALYST Crespin-Trujillo

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
Unknown	Unknown	Unknown	Recurring	Various

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 New Mexico Taxation and Revenue Department (TRD)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of the HCPAC Amendment

The House Consumer and Public Affairs Committee (HCPAC) amendment to House Bill 431 (HB 431/a) provides for the seizure and forfeiture of a motor vehicle declared a public nuisance driven by a person whose driver's license or privilege to drive is revoked for driving under the influence of intoxicating liquor or drugs. In accordance with the amendment to HB 431, home rule municipalities and other political subdivisions of the state are excluded from the provisions of Section 66-5-39 NMSA 1978 proposed in the bill if they have established or will establish vehicle forfeiture procedures for a person arrested due to a conviction for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act.

Synopsis of Original Bill

House Bill 431 (HB 431) adds as a basis for forfeiture under the Forfeiture Act, Section 31-27-1 through 31-27-7 NMSA 1978, of a motor vehicle driven by a person convicted of driving under

the influence of intoxicating liquor or drugs and whose driver's license was revoked after a first DWI conviction or for violation of the Implied Consent Act unless seizure of the motor vehicle poses an imminent danger to the health, safety or employment of the person's immediate family or the family of the owner of the motor vehicle. The bill also amends Section 66-5-39 NMSA 1978 providing penalties for driving while a license is suspended or revoked.

All sale proceeds from the sale of forfeited property is to be distributed to first pay reasonable expenses incurred for storage, protection and sale of the property, with any remaining balance to pay restitution to or on behalf of victims, if any, of the crime related to the forfeiture. Lastly, if there still exists a remaining balance, the money will go to the general fund of the governing body of the seizing law enforcement agency to be used for alcohol or drug abuse treatment services, prevention and education programs, and for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations, with certain exceptions.

FISCAL IMPLICATIONS

The Public Defender Department (PDD) would likely absorb any fiscal impact due to the enactment of this proposed change in statute in the ordinary course of business. The Administrative Office of the Courts (AOC) would be responsible for minimal administrative costs for statewide update, distribution and documentation of statutory changes and reports that any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. The Attorney General's Office (AGO) notes that storage space for forfeited vehicle will incur costs for law enforcement agencies or local jurisdictions and administrative staff for law enforcement agencies will need to be hired to coordinate to organize the sales and proceeds of forfeited vehicles.

SIGNIFICANT ISSUES

The bill would amend the statewide Forfeiture Act. The AGO reports that in *State v. Nunez*, 2000-NMSC-013, 129 N.M. 63, although criminal prosecution and civil forfeiture proceedings were separate, the forfeiture sanction was tied to a crime therefore it is punitive and violates double jeopardy. According to this proposed bill, forfeiture issues have to be brought together with criminal cases. The forfeiture action needs to remain a nuisance law under state statutes. Currently, all forfeiture actions are brought as civil actions. The PDD also cites *State v. Nunez* which civil forfeiture complaints and criminal charges for the same crime under the Controlled Substances Act must be brought in a single, bifurcated proceeding. Thus, *Nunez* also requires that the State prove, by clear and convincing evidence that the property in question is subject to forfeiture.

PERFORMANCE IMPLICATIONS

The potential changes implemented as a result the passage of HB 431 would like impact the district courts performance measures in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

The AGO states that if a hearing officer is to preside over these forfeiture hearings, then the position must go out for a bid or for a request for proposal (RFP). This bill could supersede municipal ordinances dealing with forfeiture proceedings. Vehicle seizure ordinances are in place in Albuquerque and Santa Fe. The AOC notes the Forfeiture Act has many statutory requirements that could impact the courts, if a large number of cases are filed.

TECHNICAL ISSUES

The Taxation and Revenue Department (TRD) reports that HB 431 would amend Section 66-5-39 NMSA 1978, which has always contained conflicting language. The statute refers to a person's driving privilege being suspended or revoked and that the person knows the driver's license was suspended or revoked. Page 4 line 22, after the word "license" the phrase "or privilege to drive" should be added. The same change should be made on page 6, line 13. There have been magistrate and municipal courts that use the conflicting language to dismiss tickets because the person's license was already suspended or revoked.

TRD states the language starting on page 6, line 25, through page 7, line 4, which is currently in statute, results in confusion and is difficult for the Motor Vehicle Division (MVD) to implement. When MVD receives a conviction for driving while suspended, MVD "shall extend the period of suspension for an additional like period." Some suspensions are for indefinite time periods. For example, if a person does not pay a ticket, his or her driving privileges are suspended until the ticket is paid, perhaps three years later. The law would provide clearer direction to MVD if it stated the specific length of the suspension period. One year would be consistent with Section 66-5-32.

The Forfeiture Act requires a civil forfeiture complaint to be filed and it says that the district courts have jurisdiction over forfeiture and that the case must be brought in the same proceeding as the criminal matter and to the same trier of facts. The AOC reports that the changes brought about by HB 431 could create a large number of cases filed in the district courts which would have dual tracks: one for the criminal charge and the other a civil forfeiture because the district attorney's office must enter as the prosecutor since law enforcement officers cannot act as prosecutors in district courts. While the number of criminal cases in magistrate courts would decrease, the criminal cases would be shifted to the caseload of the district courts.

On page 6, lines 9-11, the term "imminent danger" is used as a possible exception for the forfeiture of the motor vehicle by an individual. This term should be more clearly defined as a condition for which a defendant does not have to forfeit their vehicle.

OTHER SUBSTANTIVE ISSUES

The AGO reports that defendants will raise the issue of violation of due process of law under the 14th amendment as the government is depriving them of their property.

The New Mexico Municipal League states that an individual is still constitutionally entitled to a trial on the charge of driving while the license is revoked and the provision permitting the seizure and forfeiture of the vehicle might be premature because the individual is not yet convicted of the offense. An alternative would be to wait for the individual's conviction before making the

vehicle subject to seizure and forfeiture, not at the time of arrest, as implied by the HB 431.

AMENDMENTS

The AGO recommends the forfeiture proceeding must remain a civil proceeding or double jeopardy issues will be implicated. Under *City of Abq v. One (1) 1984 Chevy*, 2002-NMSC-14, 132 N.M. 187, that case emphasizes that the purpose of city ordinance is to promote health and safety of citizens of ABQ by reducing motor vehicle nuisances. There is no double jeopardy because forfeiture sanction is remedial and therefore serves primary purpose of protecting public safety.

VCT/blm