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FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 2/11/03 HB 139

SHORT TITLE: DWI Vehicle Seizure SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Minimal (See Narrative)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 248

Relates to HB 40, HB 117, HB 189, HB 327, HB 335, SB 16, SB 93, SB 99, SB 261, SB 266

Conflicts with SB 82

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Public Defenders (PD)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Administrative Office of the District Attorney (AODA)
 State Highway & Transportation Department (SHTD)
 New Mexico Corrections Department (CD)
 Bernalillo County Metropolitan Court (BCMC)
 LFC Files

SUMMARY

Synopsis of Bill

House Bill 139 would make provisions for seizure, forfeiture and disposal of a motor vehicle of a person convicted of driving with a revoked drivers license if the underlying revocation was for driving while under the influence of intoxicating liquor or drugs or violation of the Implied Consent Act. As drafted, the legislation would require that the seizure, forfeiture and disposal of said vehicle be pursuant to the provisions of the Forfeiture Act.

The bill also provides for the seizure, forfeiture, and disposal of the offender's motor vehicle when the offender is a subsequent DWI offender and has had at least one (1) prior DWI conviction.

Significant Issues

The intent of House Bill 139 is to target the chronic offender who has not only continued to drive under the influence, but is driving illegally. Without a car, a DWI offender could not re-offend.

Currently, Albuquerque and Dona Ana County are the only entities that have ordinances relating to vehicle forfeiture. House Bill 139 would implement a vehicle forfeiture program and is more stringent than the ordinances adopted by Albuquerque and Dona Ana County.

FISCAL IMPLICATIONS

The bill does not make an appropriation. Local and state law enforcement and the judiciary will be significantly impacted administratively and fiscally.

- The Corrections Department indicates that the bill might decrease costs to the Department in both the short term and the long term if there are a lesser number of offenders sentenced to Department prisons as subsequent DWI offenders.

The contract/private prison annual costs of incarcerating an inmate based upon Fiscal Year 02 actual expenditures is \$23,552 per year for males. The cost per client to house a female inmate at a privately operated facility is \$25,117 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

- The effect on the Administrative Office of the District Attorney (AODA) would be as follows:
 - a. The District Attorney's Office would need to shift unknown number of attorneys to District Court to prosecute forfeiture acts. The limited jurisdiction granted to the Metropolitan Court does not include forfeitures. See NMSA 1978, § 35-3-3 (2001).
 - b. Personnel will need to be assigned to take control over the vehicles while they are in State custody, and personnel will need to administer the sale or other disposition of the vehicles. These are recurring costs.

- c. Proceeds from the sale of the vehicles may generate some revenue; however, it is not known whether revenue generated will exceed administrative costs of the program
- The Department's Federal Highway construction fund has been sanctioned \$3 million in FY00, \$3 million in FY01, and \$6 million in FY02. The fund will continue to be sanctioned \$6 million/year in future Fiscal years as long as NM does not meet the certain criteria. This Bill may bring NM into compliance with a second criteria (mandatory impoundment or immobilization of a vehicle for all repeat DWI offenders, NM currently meets 1 of 4 criteria). The Department is researching this issue with the Federal Government.
- In regards to the judiciary, any additional fiscal impact would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Additionally, there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes

ADMINISTRATIVE IMPLICATIONS

Please refer to the fiscal implications section above.

CONFLICT

House Bill 139 and Senate Bill 82 are both trying to accomplish similar tasks. House Bill 139 requires the vehicle to be subject to seizure, forfeiture and disposal as opposed to Senate Bill 82, which requires mandatory immobilization.

It is suggested by AODA that within the City of Albuquerque, this bill conflicts with its Vehicle Nuisance Ordinance. Albuquerque, N.M., Code of Ordinances ch. 7, art. 6, §§ 7-6-1 to -6 (1992, as amended through 2000 amendments). The Supreme Court has already specifically carved out an exception for this ordinance from its previous pronouncement that double jeopardy attaches in a companion criminal case upon the entry of a judgment of forfeiture. City of Albuquerque v. One (1) 1984 White Chevy., 2002-NMSC-014, 132 N.M. 187, 46 P.3d 94. However, the passage of this bill should not preclude the City from pursuing forfeitures under its own ordinances.

OTHER SUBSTANTIVE ISSUES

The Public Defenders indicated that the legislation does not contemplate the "innocent party" consequences of the measure if seizure of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The repercussions of immobilizing a motor vehicle in vast geographic areas that have no public transportation are profound. Further, the bill may have some inherent constitutional flaws if the vehicle seized either belongs to someone else, or is owned jointly by another.

It is suggested by AODA that the reference to the Forfeiture Act does not spell out the purpose of the proposed forfeitures. This will invite numerous legal challenges in what has already become one of the most fiercely litigated areas of criminal law--DWI's. Specifically, the Supreme Court in *City v. One 1984 Chevy* Ut., premised its holding on the detailed purpose section of Albuquerque's Vehicle Nuisance Ordinance and its protection for secured parties or owners who were unaware of the vehicle's illegal use. The drafters failure to include a purpose section or an innocent owner provision may prove problematic.

While this concern is irrelevant to felony DWI charges in the district courts, since the State may pursue the simultaneous criminal and civil actions pursuant to NMSA 1978, § 31-27-6 (2002), it will be a problem in metropolitan and magistrate court prosecutions as these courts have no jurisdiction over forfeitures.

According to the Department of Public Safety, the significant issue is that the legislation, as proposed, requires that the seizure, forfeiture and disposal is pursuant to the provisions of the Forfeiture Act. A recent case, City of Albuquerque, ex rel. Albuquerque Police Department v. One 1984 White Chevy 132 N.M. 187 (2002) approved the City of Albuquerque's DWI forfeiture ordinance, and in so approving it, specifically stated that it was not subject to the New Mexico Supreme Court's decision in State v. Nunez 2000-NMSC-013, 129 N.M. 63 (2000). It should be noted that the Forfeiture Act referred to in the proposed legislation was a legislative response to the Supreme Court's decision in State v. Nunez. It should also be noted that DPS no longer pursues any forfeitures that are subject to the Forfeiture Act.

The Forfeiture Act as enacted is unworkable because it is procedurally burdensome and requires DPS to expand significant attorney resources with no ability to cover the cost of providing those resources. Accordingly, if this legislation were enacted, DPS could not pursue forfeiture without legislative appropriations to cover the costs attendant with the litigation. Even if DPS had legal resources to pursue the forfeitures, it is doubtful the state could prevail in a forfeiture under the Forfeiture Act. There are jurisdictional problems because most DWI cases are tried in municipal, magistrate and metropolitan courts, and forfeiture actions under the Forfeiture Act are brought in the district courts. Consequently, DPS suggests that if forfeiture is to be an effective tool to combat the DWI problem, the forfeiture provisions should model those employed by the City of Albuquerque Municipal Statute.

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