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FISCAL IMPACT REPORT

SPONSOR Cravens **ORIGINAL DATE** 2/15/07
LAST UPDATED 2/28/07 **HB** _____
SHORT TITLE Seizure of DWI Offender Vehicles **SB** 690/aSPAC
ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 273

SOURCES OF INFORMATION

LFC Files
 Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee (SPAC) amendment makes a technical correction to the forfeiture provision on page 3 of the bill. The amendment states that vehicles shall be “subject to forfeiture” pursuant to the Forfeiture Act instead of “forfeited to the state” pursuant to the Forfeiture Act.

Synopsis of Original Bill

Senate Bill 690 provides that when a person is arrested for driving with a suspended or revoked license and the person’s privilege was revoked for DWI or a violation of the Implied Consent Act, the motor vehicle the person was driving shall be seized upon arrest. The bill provides that

if the person arrested is the owner of the vehicle, the vehicle shall be forfeited to the state pursuant to the Forfeiture Act.

SB 690 further provides that if the person arrested is not the owner, the owner may obtain the vehicle by submitting a statement affirming that the owner will not allow a person without a valid driver's license to operate the owner's vehicle. Under the bill, the motor vehicle division shall keep the owner's statement with the vehicle's registration records and if a person without a valid driver's license is later found to be driving the vehicle, the vehicle shall be forfeited to the state pursuant to the Forfeiture Act.

FISCAL IMPLICATIONS

The bill carries no significant fiscal impact identified. AOC notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to challenges to seizures and forfeitures under this law. 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.

SIGNIFICANT ISSUES

PDD finds that seizure of a vehicle not owned by the driver may be contrary to constitutional principals and the Forfeiture Act. Specifically, PDD states:

Should the vehicle be forfeited, pursuant to the Forfeiture Act, because the driver is the owner and fails to have the ignition interlock device installed, the State should follow the principals enunciated in *State v. Nuñez*, 2000-NMSC-013, 129 N.M. 63, 2 P.3d 264, to avoid double jeopardy concerns.

The purpose of the Forfeiture Act, in part, is “to protect the constitutional rights of persons accused of a crime and of innocent persons holding interests in property subject to forfeiture.” NMSA 1978, § 31-27-2(A)(2). There is a presumption in the Forfeiture Act that the driver is the owner or has interest in the vehicle. The Forfeiture Act does not speak to property owned in whole by someone other than the driver. *See* NMSA 1978, § 31-27-6(D) (providing that the State must prove by clear and convincing evidence that the person charged with the crime for which the property is alleged to be property subject to forfeiture is the owner of the property). Subjecting the owner of a vehicle to forfeiture because an unlicensed person is driving the vehicle appears to run afoul of basic constitutional principles and the purpose of the Forfeiture Act.

According to AOC, the bill does not address the situation where an individual is arrested for driving with a suspended or revoked license and the person's vehicle is seized upon arrest and forfeited but then the person is not convicted.

PERFORMANCE IMPLICATIONS

AOC indicates that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed

- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 690 relates to Senate Bill 273.

BE/nt