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HOUSE MEMORIAL 100

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

James R.J. Strickler

A MEMORIAL

REQUESTING THE OFFICE OF THE ATTORNEY GENERAL TO CONVENE A TASK FORCE TO STUDY THE POTENTIAL FOR AND APPROPRIATENESS OF FORFEITURE OF REAL PROPERTY THAT IS USED TO COMMIT A VIOLATION OF THE CONTROLLED SUBSTANCES ACT.

WHEREAS, the Controlled Substances Act identifies numerous types of property that are now subject to forfeiture if used in the commission of a drug-related crime, including a controlled substance; the raw materials of a controlled substance; a potential container for a controlled substance; any vehicle or conveyance used to transport a controlled substance; any written material, records or data used to manufacture, distribute or traffic a controlled substance; drug paraphernalia used with a controlled substance; or money that is the fruit of selling a controlled substance; and

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1           WHEREAS, the federal criminal code identifies additional  
2 types of property that are subject to forfeiture under these  
3 circumstances, including interests in real property and any  
4 improvements or appurtenances to the real property; and

5           WHEREAS, in violating the Controlled Substances Act, a  
6 perpetrator is often, of necessity, located in or on real  
7 property, without which it would be difficult or impossible to  
8 commit the violation and which should, therefore, be subject to  
9 forfeiture; and

10           WHEREAS, forfeiture of real property could have unintended  
11 consequences that would bring harm to family members of the  
12 perpetrator who are in no way involved in the commission of the  
13 crime; and

14           WHEREAS, there may be other benefits or consequences of  
15 forfeiture that are not identified in this memorial; and

16           WHEREAS, a balance of priorities must be carefully weighed  
17 between justice, protection of the public and fairness to  
18 innocent persons who are inadvertently involved in a criminal  
19 activity;

20           NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF  
21 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the office of  
22 the attorney general be requested to convene a task force to  
23 study the potential for and appropriateness of forfeiture of  
24 real property that is used to commit a violation of the  
25 Controlled Substances Act; and

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1 BE IT FURTHER RESOLVED that the task force include  
2 representation from the New Mexico district attorneys  
3 association, the public defender department, the New Mexico  
4 sheriffs' and police associations, the drug policy alliance and  
5 others with interest and expertise in the nature of and  
6 consequences of forfeiture of property and drug-related crimes;  
7 and

8 BE IT FURTHER RESOLVED that the study also consider the  
9 differences between federal and state law regarding forfeiture  
10 of property in these circumstances and evaluate whether there  
11 is a benefit to aligning state law with federal law; and

12 BE IT FURTHER RESOLVED that a report of the findings and  
13 recommendations of this memorial be presented to the  
14 appropriate interim legislative committee by October 31, 2009;  
15 and

16 BE IT FURTHER RESOLVED that a copy of this memorial be  
17 transmitted to the office of the attorney general.