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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR Strickler LAST UPDATED 03/12/11 HB 263/aHCPAC/aHJC

SHORT TITLE Vehicle Seizure w/DWI Arrest in Certain Cases SB \_\_\_\_\_

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### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*See Fiscal Impact				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Department of Finance and Administration (DFA)  
 Taxation and Revenue Department (TRD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment adds that in order for a vehicle to be seized and subject to forfeiture, the two or more convictions must have occurred within ten years prior to an arrest. The Amendment restores language and further clarifies that remaining fund balances “to be used for *“alcohol or drug abuse treatment services, prevention and education programs, demand-reduction initiatives, or for enforcing narcotics law violation...”*”.

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment will allow a vehicle seizure after two *or more* prior DWI convictions.

Synopsis of Original Bill

House Bill 263 amends Section 66-5-39 of the Motor Vehicle Code requiring that when a person who is arrested for driving with a license that was revoked because of a conviction for driving under the influence (DUI) or a violation of the Implied Consent Act, the motor vehicle must be seized and is subject to forfeiture. A new code section is also proposed to impose the seizure and forfeiture requirement to a licensed driver arrested for DUI who has two prior convictions in any jurisdiction. The bill also removes the current restriction on how government entities may use the proceeds from forfeited property.

**FISCAL IMPLICATIONS**

The bill removes the restriction that a law enforcement agency's use of funds obtained from the disposition of forfeited property must be used for drug abuse treatment services, drug prevention and education programs, other substance abuse demand reduction initiatives or enforcing narcotics laws. The process of seizing, storing and/or transporting vehicles for long term storage may cost more than what is received by agencies under forfeiture proceeds.

DPS notes that the bill will require the vehicle to be towed to a secured storage facility to avoid incurring storage fees while the case is adjudicated. This requires the officer to remain at the scene until the towing company arrives and follow the vehicle to the storage area. All tow bills of this nature fall within the responsibility of the law enforcement agency as the vehicle would be subject to forfeiture.

AOC maintains that driving on a revoked license case is normally charged in magistrate court and is often prosecuted by a law enforcement officer. DWI 3<sup>rd</sup> offenses are also charged in magistrate courts. Since the forfeiture must be filed in district court, every driving on a revoked license case and DWI 3<sup>rd</sup> offense case in which law enforcement wants a vehicle forfeiture, must be charged in district court as well and the district attorney's office must enter as the prosecutor since law enforcement officers cannot prosecute driving on revoked license cases in district court. There could be a number of cases filed in the district courts which would have dual tracks: one of criminal for the charge itself and the other civil for the forfeiture, which would impact the resources of the courts.

DOT further notes that the bill may lead to an increase in the number of offenders who install an ignition interlock. Increased installation of the interlocks may increase the number of non-indigent offenders who pay \$100 into the indigent fund. However, that increase may be offset by an increase in the number of individuals who qualify for the indigent subsidy.

**SIGNIFICANT ISSUES**

The bill will require all local governments to seize a vehicle from people upon arrest for DWI after two prior convictions and from people who are driving on a DWI revoked license.

Repeat DWI offenders are currently required to install an interlock for a period that is equivalent to the number of DWI convictions; two years for a second DWI conviction; three years for a third DWI conviction; lifetime revocation for a fourth or subsequent DWI conviction. A conviction for driving while on revoked status for these offenders will add one year to the offender's current revocation period.

## **PERFORMANCE IMPLICATIONS**

DPS reports the inability of officers at the present time to obtain “certified” Motor Vehicle Division Records pertaining to revoked/suspended licenses in a *timely* fashion, as well as the burden of proving in court that the offender was served with documentation pertaining to his/her driver’s status and/or that the offender was “fully aware” of his/her driver’s status.

TRD notes that the forfeiture provision in Section 4 of the bill conflicts with the policy decisions in § 66-8-102 requiring a mandatory interlock license and device upon conviction and § 66-5-33.1 requiring six months of the interlock license and device to reinstate from a DWI revocation. Section 4 mandates forfeiture so that once the person is convicted, they will be unable to comply with §§ 66-8-102 and 66.5.33.1 unless they buy a new vehicle. Section 4 could be amended to require forfeiture unless the person installs an interlock device on the vehicle.

## **ADMINISTRATIVE IMPLICATIONS**

The bill will increase the duties of the arresting agency by requiring the officer to seize the vehicle of the DWI offender if the offender has two previous DWI convictions.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill may conflict with SB-216, SB-195 and SB-307 as all four bills amend § 66-5-39. It also may conflict with SB-308 as both bills enact new and different forfeiture provisions.

## **OTHER SUBSTANTIVE ISSUES**

DOT comments that the National Highway Traffic Safety Administration (NHTSA) evaluated the New Mexico ignition interlock program in 2010. According to the report, the statewide installation rate for interlocks was at 49%, which leaves over 50% of convicted offenders without an interlock. The NHTSA report suggested that applying pressure on offenders to install interlocks by threatening a less desirable sanction might result in interlock installation by offenders who would be less likely to install them.

In 2008, there were 13,564 total DWI convictions according to MVD driver history. Of that total, 4,972 were repeat DWI offender convictions.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Vehicle seizure and forfeiture will be available in only limited jurisdictions in New Mexico.

AHO/svb