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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/12

SPONSOR James & Munoz LAST UPDATED _____ HB 160

SHORT TITLE Vehicle Seizure For DWI Arrests SB _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Taxation and Revenue (TRD)
 Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Administrative Office of District Attorney’s (AODA)
 Department of Transportation (DOT)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The bill adds as a basis for forfeiture under the Forfeiture Act, Sec 31-27-1 thru 31-27-8, a motor vehicle driven by a person arrested for driving while license is suspended or revoked and the driver’s privilege to drive was revoked due to a conviction for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act.

The bill also adds as a basis for forfeiture under the Forfeiture Act, a motor vehicle driven by a person arrested for driving under the influence of intoxicating liquor or drugs where the driver has previously been convicted of driving under the influence.

Finally, the bill also provides that after the forfeiture of property under the Forfeiture Act, any remaining balance of sale proceeds that is deposited in the general fund of the governing body of the seizing law enforcement may be used for alcohol abuse treatment services, alcohol prevention and education programs, or for enforcing driving under the influence violations in additions to the current uses in the Forfeiture Act.

FISCAL IMPLICATIONS

The DFA reports that while local governments will likely fund the cost to store and secure seized and forfeited property, the bill could increase revenues to local governments over time.

The AOC states 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 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. As discussed below, the number of cases could be large and would require possibly more employees as well as other resources to process the increase in criminal and civil cases. The costs at this time are unknown.

SIGNIFICANT ISSUES

The AOC states that the Forfeiture Act has many requirements which will impact the courts if a large number of cases are filed. First, the Act requires that a civil forfeiture complaint be filed. Second, 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 fact. The problem here is that a driving on a revoked license case is normally charged in magistrate court and is often prosecuted by a law enforcement officer. Additionally, DWI 2nd and 3rd offenses are also charged in magistrate courts. Since the forfeiture must be filed in district court, every driving on revoked license case and DWI 2nd and 3rd offenses in which law enforcement intends vehicle forfeiture must be charged in district court as well. The district attorney's office must enter as the prosecutor since law enforcement officers cannot act as prosecutors in district court. There could be a very 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. The issues must be bifurcated so there would be twice the number of hearings. Though the number of criminal cases in magistrate courts would decrease in the same number as filed in district courts, the number doubles in district court with the forfeiture filing.

The AGO reports that the issue of double jeopardy is likely to be raised due to criminal charges and civil forfeiture arising from the same incident. If the civil forfeiture is ruled by the courts to be equivalent to punishment, civil forfeiture proceedings and criminal charges for the same incident might need to be brought in a single, bifurcated proceeding. If not, proceeding on one matter separately before the other could violate state double jeopardy provisions. See *State v. Nunez*, 129 N.M. 63. On the other hand, the proposed provisions are similar to Albuquerque's DWI forfeiture ordinance. If the civil forfeiture is ruled by the courts not to be punishment, but to serve the remedial purpose of protecting the public from drivers who persist in driving after license revocation and multiple DWI offenses, there is no state double jeopardy violation and the civil forfeiture and criminal proceedings may proceed separately. See *City of Albuquerque, ex rel. Albuquerque Police Dept. v. ONE (1) 1984 WHITE CHEVY UT.*, 132 N.M.. 187.

Finally, the DOT states that the bill will support the goals of NMDOT's Traffic Safety Division by allowing the proceeds from forfeited property to be used for alcohol treatment and prevention programs and for enforcement of DUI violations. Further, the seizure, and possible forfeiture, of a vehicle driven by a convicted DUI offender serves as an additional DUI deterrent. There are only a few local ordinances statewide that provide for seizure and forfeiture of vehicles of DUI offenders.

ADMINISTRATIVE IMPLICATIONS

The AODA states that new material subjecting a driver's vehicle to seizure and forfeiture for being arrested for DWI who has prior convictions for DWI is expected to affect a much larger group of drivers than those who are driving on a revoked license for conviction for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. The petitions for forfeiture will increase substantially under this new provision. Such an increase affects the DA offices since they would be required to file the petitions for forfeiture along with the criminal case for DWI. See Section 31-27-6 (C). In addition, prosecutors will have to learn the Rules of Civil Procedure in order to pursue these forfeitures and thus will need specialized training.

Further the AODA states that the bill will require filing a companion civil lawsuit for every prosecution for second or subsequent DWI. It would significantly increase DWI caseloads. It may be difficult for the police to determine at the time of arrest if the driver has a prior conviction for DWI. If the officer does not find such a conviction, but it is later learned that the driver in fact has such a conviction, there is a question whether the vehicle the driver was driving can be seized.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The AGO states that the bill could include language to clarify and specifically state the purpose and intent of the Legislature in regards to the civil forfeiture provisions, thus preventing any court in the future from having to guess the legislative intent. See City of Albuquerque, ex rel. Albuquerque Police Dept. v. ONE (1) 1984 WHITE CHEVY UT., 132 N.M. 187

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Vehicle seizure and forfeiture will available only in limited jurisdictions in New Mexico. For example, the City of Albuquerque, the City of Santa Fe, the City of Las Cruces, Dona Ana County, Santa Fe County, and Tarrant County all have forfeiture laws in their jurisdictions.

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