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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11

SPONSOR Strickler LAST UPDATED _____ HB 203

SHORT TITLE Forfeiture of Real Property Used in Felony SB _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
		\$300.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			\$100.0	\$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

None

SUMMARY

Synopsis of Bill

House Bill 203 adds real property to the list of property that is subject to forfeiture when the property is used to commit or to facilitate the commission of a felony offense in violation of the Controlled Substances Act. Forfeiture is not required if the violation of the Controlled Substances Act is committed without the property owner's knowledge or consent, or if the violation is a misdemeanor rather than a felony.

FISCAL IMPLICATIONS

The revenue effect assumes one house would be forfeited a year. The procedures for forfeiture are somewhat cumbersome and would be time-consuming and relatively expensive. State police costs are shown as 1/3rd of the value of the confiscated real property.

Proceeds from forfeitures must be transferred into the current school fund (State Constitution, Article XII, Section 4 – see significant issues), which is, in effect, a transfer to the state general fund.

Because the monetary value of the forfeiture would have to be transferred to the state general fund, the costs for the state police or other law enforcement agencies to sue the property, to sell the property and to transfer the resulting sale proceeds to the general fund would be borne by the regular state police budget or budgets of the local law enforcement agencies. Rather than pursue real property forfeiture under state law, it is more likely that the State Police and local sheriffs and city police officers would try to conduct the forfeiture under federal law so that the costs of the forfeiture would be reimbursed by the value of the confiscated property.

LFC has solicited advice and comment from DPS on this issue.

SIGNIFICANT ISSUES

In the past, forfeiture of property such as vehicles and firearms, have proceeded pursuant to federal law. In most cases, the property, after confiscation, has been turned over to the police agency that investigated the case and identified property eligible for confiscation. It is uncertain if state law (Section 30-31-34 NMSA 1978) has been used for forfeitures. If the forfeiture is conducted under state law, the prosecuting agency would not be awarded the confiscated property because of the State Constitution.

New Mexico Constitution, Article XII, Sec. 4 [Current School fund.]

All forfeitures, unless otherwise provided by law, and all fines collected under general laws; the net proceeds of property that may come to the state by escheat; the rentals of all school lands and other lands granted to the state, the disposition of which is not otherwise provided for by the terms of the grant or by act of congress shall constitute the current school fund of the state.

Confiscation of real property pursuant to State Law would also result in the sale of the property and the transfer of the sale proceeds to state general fund.

POSSIBLE QUESTIONS

Does federal law permit and/or encourage the State Police and local law enforcement agencies to pursue forfeiture against real property? If so, would the state general fund receive any of the value from the forfeiture under federal law?

LG/svb