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FISCAL IMPACT REPORT

SPONSOR Ruiloba ORIGINAL DATE 2/14/2017
LAST UPDATED 3/16/2017 HB 329

SHORT TITLE Unclaimed Property Sales by Peace Officers SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 202.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (OAG)

Department of Public Safety (DPS)

Department of Cultural Affairs (DCA)

SUMMARY

Synopsis of Bill

House Bill 329 amends 29-1-14 NMSA 1978 regulating the disposition of unclaimed personal property that comes into the possession of a peace officer.

The bill raises the fair market value of unclaimed personal property that can be sold at public sale from \$50 to \$500 or greater and shortens from 90 days to 30 days the time that personal property must go unclaimed before being offered for public sale. Unclaimed personal property worth less than \$500 may be destroyed after 30 days. The previous version of the law stated the property had to be worth less than \$50 and be kept for 90 days. The timeline for use and disposal of unclaimed alcoholic beverages is also lowered from 90 days to 30 days.

Law enforcement shall allow state museums access to agency inventory records for the purpose of inspecting and selecting items that are appropriate for state museum collections. However, this provision does not apply to items of significant historical value lawfully seized as evidence for prosecution of a violation of statute or ordinance or that have otherwise come into the lawful

possession of a state, county, or municipal law enforcement agency and that have been in that agency's possession for more than 30 days. Once it is determined that items of historical value are no longer necessary for use in obtaining a conviction or are not needed for any other public purpose, law enforcement may apply to the district court, ex parte and without notice, for an order authorizing a sale or a transfer of the item to a state museum.

The timeline governing the disposition of deadly weapons, poisons, controlled substances and contraband has been changed from 90 to 30 days.

FISCAL IMPLICATIONS

DPS analysis states the bill does not affect the department's operating budget or influence revenues.

AOC states 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 actions for wrongful sale, transfer or destruction. 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

The OAG states there appeared to be no legal or constitutional barriers to enacting this bill.

The AOC explains that besides increases in fair market value and the time period required before sale or destruction, Section 29-1-15(B) NMSA 1978, not included in the scope of this bill, provides that a person purchasing unclaimed personal property at a public auction by law enforcement has good title to the property. The true owner of the unclaimed personal property is divested of any right to the property and may not make any claim to the property. HB 329 will make it more difficult and less likely for a true owner to claim property before the time period passes, permitting law enforcement to dispose of unclaimed property and will potentially cause greater hardship for a person whose property has been destroyed because it has a fair market value equal to or less than \$500, even though of great value to a person of limited means or funds, or sentimentally.

AOC analysis also posits that the current Section 29-1-14(H) NMSA 1978 permits state museums access to agency inventory records for the purpose of inspecting and selecting firearms that are appropriate to state museum firearm collections. HB 329 requires a law enforcement agency to allow state museums access to agency inventory records for the purpose of inspecting and selecting any items appropriate for state museum collections, not limited to firearms prior to the sale of seized personal property.

DCA explains:

State museum procedures for acquiring objects for their collections require that new acquisitions be first approved by each museum's collections committee, then recommendations are made by the collections committee to their respective Boards of Trustees. The Boards are the final say in acquiring the items into permanent collections because they have fiduciary and legal responsibility for the collections. See e.g. NMSA 1978,

§ 18-3-3 (granting the Museum of New Mexico Board of Regents authority over the Museum of New Mexico’s collections). The various Boards meet at regular intervals subject to their rules.

The bill allows the state museums access to inventory lists but does not have a mechanism or timeframe for informing the state museums when items that might interest them are placed on those lists, therefore placing the burden on the state museums to routinely check these lists.

In addition, the bill gives the law enforcement agency the ability to request from the district court authority to transfer items of “significant historical value” to a state museum once the law enforcement agency determines that the items are no longer required for a criminal prosecution and no longer serve any other public purpose. Because the NMAC rules, policies and procedures for the acquisition of objects and artifacts by state museums for their collections requires final approval by the respective state museum Boards, the law enforcement agencies could be required to hold the unclaimed property for several months until approval of the museum boards is obtained. If a museum board rejects the proposed acquisitions, then the law enforcement agencies could proceed with property disposal.

In addition, the bill neither defines the term “item of significant historical value” nor provides guidance on how a law enforcement agency is to determine whether a particular item can be classified as an item of significant historical value for purposes of subsection H. The New Mexico History Museum has in the past acquired significant historical firearms from peace officers through proper acquisition procedures.

If the law enforcement agency is granted a court order authorizing transfer of items to a state museum, such transfer cannot take place without approval by the Museum Governing Board first accepting the items into its collection. The Museum Boards’ review and approval process could cause a slight delay until the law enforcement agency is able to dispose of the property, while the museum goes through its accessioning process described above.

TECHNICAL ISSUES

The OAG states “it may be helpful to define or further clarify what is a ‘state museum’ as used in HB 329 (eg. limited to those under the Department of Cultural Affairs, etc).”

The OAG also explains “certain conditions apply to items ‘of significant historical value’ without further defining the term or indicating who or what entity is responsible deciding whether a specific item falls under the definition (eg. ‘as reasonably determined by the law enforcement agency’).”

TR/al/jle