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FISCAL IMPACT REPORT

SPONSOR <u>Sen. Duhigg/Rep. De La Cruz</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/27/2025</u>
SHORT TITLE <u>Seizure of Property by Law Enforcement</u>	BILL NUMBER <u>Senate Bill 157</u>
	ANALYST <u>Valdez</u>

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal loss	At least \$5,778	At least \$5,778	At least \$5,778	At least \$5,778	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 Office of the State Auditor (OSA)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Department of Finance and Administration (DFA)
 Healthcare Authority (HCA)

SUMMARY

Synopsis of Senate Bill 157

Senate Bill 157 (SB157) amends the Forfeiture Act (31-27-1 through 31-27-11 NMSA 1978). Section 1 of the bill amends the exceptions to the applicability of the Forfeiture Act. The exceptions are detailed in 31-27-11 NMSA 1978 and says that law enforcement agencies cannot transfer seized property to federal law enforcement or federal agencies unless three conditions are met: (1) The value of the seized assets must exceed \$50 thousand. (2) The crimes that led to the asset seizure were interstate in nature and sufficiently complex. (3) The seized property may only be forfeited under federal law. In addition, Subsection B of the added exception (31-27-11) prevents law enforcement from transferring property to the federal government if doing so avoids the protections afforded to the property owner by the rest of the Forfeiture Act.

This same exception is also added to the beginning of Section 31-27-7, which details requirements for the state around titles to seized property, their disposition, and resulting proceeds. Also in Section 31-27-7, SB157 would add a clause stating that the assets seized from someone convicted of drug-related crimes may be appropriated by the Legislature for drug treatment.

Section 3 of SB157 updates the second and third conditions listed above under which seized property may be transferred to federal agencies or federal law enforcement. The second condition under existing law states that law enforcement may transfer seized properties if the criminal conduct that led to seizure was interstate in nature and sufficiently complex. The third condition states that the seized property may only be forfeited under federal law. Those two conditions, the second and third, would be replaced by a new second condition which says that state law enforcement cannot transfer property to the federal government unless the federal government has filed charges against the property's owner, there is no innocent owner, and the property is evidence in the federal prosecution.

Finally, SB157 adds two clauses to the end of 31-27-11 which state that law enforcement may participate in federal equitable sharing programs if they do not accept money unless the property owner has been convicted in federal court. Further that money must be spent on drug prevention or awareness programs.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The changes to New Mexico law proposed by SB157 would likely increase revenue to law enforcement agencies that would become free to participate in federal equitable sharing programs. Participation in these programs, which allow the proceeds from seized assets to be shared between state and federal law enforcement, generated \$4.4 million in annual revenue for New Mexico law enforcement in 2015, according to the Department of Public Safety (DPS). As of 2015, the Forfeiture Act required proceeds from state and federal collaboration to be deposited into the state's general fund. Since federal Department of Justice rules do not allow distribution of these funds to entities other than law enforcement agencies, which makes the state's general fund an ineligible recipient, New Mexico has not participated since 2015. SB157 would reverse this practice, allowing state law enforcement agencies to once again participate in federal equitable sharing programs and begin generating revenue as before the rule change. Using the average annual revenue reported by DPS before 2015 as a baseline, \$4.4 million, and adjusting for inflation, this analysis estimates that the state would generate up to \$5.8 million in revenue in FY26 under this proposal.

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 challenges to the law. 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 Administrative Office of the District Attorneys (AODA) notes this bill directly addresses state law enforcement agency participation in federal equitable sharing programs. It quotes the federal Department of Justice:

One of the ancillary benefits of asset forfeiture is the potential to share federal forfeiture proceeds in appropriate cases with cooperating state, local, and tribal law enforcement agencies through equitable sharing. The program enhances cooperation among federal, state, local, and tribal law enforcement by providing valuable additional resources to state, local, and tribal law enforcement agencies assisting with investigations into violations of federal laws. However, the program is designed to supplement and enhance, not supplant, appropriated agency resources.

The Law Office of the Public Defender (LOPD) points out that allowing law enforcement agencies to keep civil forfeitures may incentivize overreach. LOPD further notes New Mexico has a “sordid past with civil forfeiture,” and the state should “proceed with caution in any bill that potentially incentivizes law enforcement agencies to seize property.”

The Office of the State Auditor’s analysis raises the issue of oversight of seized drug funds, which would be required to be spent on drug prevention or awareness programs. While OSA notes the Department of Finance and Administration (DFA) would be responsible for tracking reversions to the general fund available for appropriation, they also note, without additional resources to carry out this function, law enforcement agencies would be left to self-report. Such a lack of oversight would add to the concern raised by LOPD.

DPS raises additional concerns about the use of seized funds given the wording of SB157:

SB157’s Section 3(D) requires that a law enforcement agency “participating in federal equitable sharing programs shall spend money received from a program on drug prevention or awareness program...” This may meet one of the allowable purposes under the Department of Justice Rules and allow for equitable sharing, but DPS has some concerns. Funding from federal equitable sharing can only go to law enforcement, so any funds for drug prevention or awareness programs would have to be for programs run by the law enforcement agency who receives the funds.

OTHER SUBSTANTIVE ISSUES

DPS raises the possibility that Section 3(A)(2) of the bill will result in all property being seized by the federal government, regardless of whether it is evidence in the federal prosecution:

DPS notes that the fact of seized property (e.g., a Cadillac and \$150 thousand of cash found in the car’s trunk) may be evidence of criminal activity but isn’t usually admitted as actual evidence in the federal prosecution. However, it would be forfeited if used during the commission or was the fruit of criminal activity. If the case is adopted for federal prosecution, the federal law enforcement agency will have seized all property, whether it would be used as evidence at trial or not. Therefore, DPS recommends removing the language in Section 3(A)(2), which states that for State law enforcement to allow the transfer of seized property to federal authorities, the seized property must be “required as evidence in the federal prosecution.”

TECHNICAL ISSUES

DPS recommends striking Section 3(D) from the bill entirely:

If it is not struck, DPS believes it should be replaced with the wording that exactly matches the DOJ Equitable Sharing guidelines, which is mentioned above under “Significant Issues.” DPS is unsure if the USDOJ will make agencies eligible for equitable sharing if the use is limited to just that area.

JV/hj/hg