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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/07

SPONSOR Griego LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Seizure of Vehicles upon DWI Arrests SB 770

ANALYST Hanika Ortiz

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1			recurring	local governments

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 273  
Companion to SB 690

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
Department of Public Safety (DPS)  
Administrative Office of the Courts (AOC)  
Taxation and Revenue Department (TRD)

#### SUMMARY

##### Synopsis of Bill

Senate Bill 770 will allow vehicles of people arrested for driving while under the influence of intoxicating liquor or drugs to be towed to towing facilities or immobilized at a location specified by their owners. If the driver that was arrested owned the vehicle, the vehicle will not be released until an ignition interlock device was installed on the vehicle. If no interlock device is installed within sixty days of the arrest, the vehicle will be forfeited as prescribed by the Forfeiture Act (Section 31-27-1 to 31-27-8 NMSA 1978). In cases where the person arrested did not own the vehicle, the owner will be allowed to obtain the vehicle without installing an interlock device after submitting a statement that the owner will not allow the person arrested to drive the vehicle. However, if the driver arrested for DUI is found driving the vehicle in the future, the vehicle will be forfeited pursuant to the Forfeiture Act.

## **FISCAL IMPLICATIONS**

TRD reports the proposed measure will generate insignificant impacts on state and local revenue sources because in most cases drivers will install ignition interlock devices rather than allow their vehicles to be seized and sold.

DPS further reflects that the bill should make it clear that offenders are required to pay fees associated with seizure, interlock and forfeiture.

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 challenges to seizures and forfeitures under this 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 bill attempts to provide an additional tool in helping to keep intoxicated drivers off the road by seizing the vehicle they are operating.

The PDD note that should the vehicle be forfeited, pursuant to the Forfeiture Act, because the driver is the owner and fails to have the ignition interlock device installed, the State should follow the principals enunciated in *State v. Nuñez*, 2000-NMSC-013, 129 N.M. 63, 2 P.3d 264, to avoid double jeopardy concerns.

The PDD further notes that the purpose of the Forfeiture Act, in part, is “to protect the constitutional rights of persons accused of a crime and of innocent persons holding interests in property subject to forfeiture.” NMSA 1978, § 31-27-2(A)(2). There is a presumption in the Forfeiture Act that the driver is the owner or has interest in the vehicle. The Forfeiture Act does not speak to property owned in whole by someone other than the driver. See NMSA 1978, § 31-27-6(D) (providing that the State must prove by clear and convincing evidence that the person charged with the crime for which the property is alleged to be property subject to forfeiture is the owner of the property). This particular provision in the bill runs afoul of basic constitutional principles.

## **PERFORMANCE IMPLICATIONS**

The bill may assist in performance measures of various departments and help to reduce DWI driving, repeat offenders, and subsequent related deaths.

## **ADMINISTRATIVE IMPLICATIONS**

TRD reports that this bill will result in substantial administrative costs to the Department. Computer system impacts will include development of a new web application for entering and handling DWI forfeiture of vehicle data (estimated at approximately 1,000 hours of programming time). TRD further reports that implementation will also require rewriting the driver and vehicle system to link vehicle and driver information and automate the sweep of DWI citations on a driver and the vehicle that was used and if any statements of forfeiture are present (3000 hours). The Motor Vehicle Division will be required to keep the non-DWI-driver owner’s

statement with the vehicle's registration records. It will also be necessary for MVD to work with law enforcement agencies to develop a system for tracking and making that information available, presumably as an automatic records check on any vehicle driven by an individual with a history of DWI.

The courts report this bill will place an additional burden on staff and resources at many levels of government relating to legal issues; including, providing documentation/discovery.

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

Companion SB690 Seizure/Forfeiture of vehicle driven by subject arrested for Driving on a Revoked License

Duplicate of SB 273

### **TECHNICAL ISSUES**

The AOC requests clarification of the following:

- What coordination is there with the Ignition Interlock Licensing Act, Section 66-5-501 et. seq. NMSA 1978, requiring a person to apply for an ignition interlock license?
- How long is the person required to use the ignition interlock device?
- What provisions are there for indigent individuals? Section 66-8-102 requires an offender, upon conviction of DWI, to pay all costs associated with installation of an ignition interlock, unless the court determines that the offender is indigent.

TRD has the following comments about the bill:

- The bill may generate legal problems concerning responsibilities of tow companies. Provisions of the statute are unclear whether, when a car is impounded, if towing companies will be responsible for releasing it and what evidence will base decisions to release. And, although towing firms will be responsible for sending statements by owners to MVD, the bill does not indicate when this is to occur, or what happens if a towing company fails to comply. The bill should set forth towing firms obligations and provide some type of sanction in cases where towing firms fail to follow the law.
- It might be appropriate to require the MVD to develop affidavit forms for owners of impounded vehicle to use when retrieving their vehicles.
- Provisions of the proposal are unclear regarding how drivers arrested will get interlocks installed.
- The proposed statute does not define the term “immobilized”.
- The proposal does not specify how or who will determine if interlock devices are installed within sixty days, who notifies the owner, and who conducts the forfeiture of the vehicle to the State (page 2, lines 4-9).

DPS notes that storage of vehicles may pose a problem for most law enforcement agencies.

**OTHER SUBSTANTIVE ISSUES**

DPS comments that this bill will result in additional legal proceedings as offenders potentially fight to retain their vehicles using the court system that is already bogged down by legal red tape and loopholes. This bill will also impact the officers with court time on the civil side in addition to the normal criminal court associated with arrests.

Statistics published by the New Mexico Department of Transportation indicate 12,411 New Mexico drivers were convicted for driving while under the influence of alcohol in 2005. Of this group, 4,711 were for repeat offenders. The number of DWI convictions statewide fell from about 14,600 in 1996 to 13,000 in 2001, and has remained relatively stable since then.

AHO/nt