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FISCAL IMPACT REPORT

ORIGINAL DATE 3-15-09

SPONSOR Strickler LAST UPDATED _____ HM 100

SHORT TITLE Study Forfeiture of Drug-Crime Properties SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB703

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Defender Department (PDD)

No Responses Received From
Attorney General's Office (AGO)
Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Memorial 100 requests the Office of the Attorney General to convene a task force to study the potential for and appropriateness of forfeiture of real property that is used to commit a violation of the controlled substances act. The Task force would include a representative from the Public Defender Department.

SIGNIFICANT ISSUES

According to the Public Defender Department, NMSA 1978, Section 30-31-34 presently identifies a variety of items that may be seized by the state if the items are used or are intended for use in the manufacture of a controlled substance. The law presently permits seizure of items such as chemical ingredients, equipment, containers, vehicles, aircrafts, books, paraphernalia and narcotic related money. HB703 would add real property to the list of items to be seized. It would

include actual real property and the right, title and interest in any tract of land or appurtenances and improvements.

The PDD further adds that forfeiture is the complete divestiture of the ownership of property without compensation. *State v. Nunez*, 2000-NMSC-013, ¶ 33, 129 N.M. 63, 2 P.3d 264. It extinguishes one of the most fundamental liberty interests. *Id.* Both the federal and state constitutions provide that no person shall be deprived of life, liberty or property without due process of law; *see* U.S. Const. amends V, XIV, § 1; N.M. Const. art. II, § 18; *see also Nunez*, 2000-NMSC-013 ¶ 32 (the ownership of property is as meaningful and fundamental as the rights to life, safety, and happiness). Pursuant to *Nunez*, civil forfeiture complaints and criminal charges for the same crime under the Controlled Substances Act must be brought in a single, bifurcated proceeding. Thus, *Nunez* also requires that the State prove, by clear and convincing evidence that the property in question is subject to forfeiture.

PERFORMANCE IMPLICATIONS

When property is seized pursuant to this statute, the Public Defender Department represents the defendant on both the criminal charges and the civil forfeiture. Any increase in the number of forfeiture cases will result in a concomitant increase in the Public Defender caseload. Any new cases may add to the problem of case overload at both the trial level and the appellate level, as forfeiture cases are complicated and are frequently appealed.

RELATIONSHIP

House Bill 703 adds a new provision to NMSA 1978, Section 30-31-34. The new subsection F is the inclusion of “all real property” subject to forfeiture if the real property “is used or intended to be used, in any manner or part, to commit or to facilitate the commission of a felony offense in violation of the Controlled Substances Act.”

EO/mt