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FISCAL IMPACT REPORT

SPONSOR	Dixon/De La Cruz/ Duncan/Hickey	LAST UPDATED	2/15/23
		ORIGINAL DATE	2/14/23
SHORT TITLE	Property Seizures by Law Enforcement	BILL NUMBER	House Bill 316
		ANALYST	Daly

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	\$1,600.0	\$1,600.0	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 Law Offices of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 316

House Bill 316 amends the Forfeiture Act to change the requirements under which law enforcement agencies may participate in federal equitable sharing programs to receive proceeds from criminal forfeitures from the federal government.

To transfer seized property to the federal government, in addition to the existing requirement that the value of the seized property exceeds \$50 thousand, these conditions must be satisfied:

- Federal criminal charges must be filed;
- There must be no innocent owner of the property; and
- The seized property must be required as evidence in the federal prosecution.

HB316 authorizes law enforcement agencies to share information and cooperate with the federal government, and to participate in federal equitable sharing programs as long as no equitable sharing money is accepted by the law enforcement agency unless the owner of the property is convicted in federal court. Additionally, law enforcement agencies receiving such funds must spend that money on drug prevention or awareness programs, including costs associated with conducting law enforcement agency awareness programs.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

AOC reports 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 it. 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. These costs are indeterminate, but appear to be minimal, as reflected in the operating budget impact table above.

On the revenue side, DPS provides this explanation of the agency's participation in equitable sharing of federal forfeitures prior to 2015 (the last year it was able to participate in the program):

New Mexico State Police (NMSP) received approximately \$1.6 million on average from 2010 to 2014, receiving a total of \$8,154,398 during that time period. Funds were expended on the purchase/replacement of state-of-the-art equipment used by the NMSP Investigations Bureau to conduct its own investigations, as well as to provide assistance to local law enforcement agencies throughout the State that lacked trained investigators and such equipment.

Because DPS reports HB316 allows the state to once again participate in the equitable sharing program, the \$1.6 million average provided by DPS is reflected in the revenue table above.

SIGNIFICANT ISSUES

DPS explains that in 2015, the Forfeiture Act was amended to require all forfeited funds be deposited in the general fund. According to DPS, because the general fund is not an eligible recipient under Department of Justice (DOJ) rules of distribution (which requires distribution to law enforcement agencies only), no New Mexico law enforcement agency has received equitable sharing funds since the 2015 amendment. However, under Section 3(D) of HB 316, a law enforcement agency participating in federal equitable sharing programs shall spend monies received from a program on drug prevention and awareness programs and their associated costs. DPS advises that this is an allowable purpose under DOJ rules and will allow for equitable sharing.

DPS also provides this comment and recommendation from the New Mexico State Police:

Seized property (e.g., a Cadillac and \$150 thousand of cash found in the car's trunk) may be evidence of criminal activity but is not usually admitted as actual evidence in the federal prosecution. It would, however, be forfeited if it were 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, the NMSP 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

Page 6, lines 11-12: AODA questions the use of the phrase "there is no innocent owner".

OTHER SUBSTANTIVE ISSUES

LOPD calls attention to a situation arising under HB316 that could lead to increased litigation in the event that:

Property seized in concert with federal law enforcement conflicts with procedures under state law. *See Albin v. Bakas*, 2007-NMCA-076, ¶¶ 28-30, 141 N.M. 742 (discussing property seized under *state law* in accordance with the Act and holding that compliance with procedures required even where transfer of property to federal agency intended). In other words, compliance with state law, which is "construed strictly *against* forfeiture," (*id.*, ¶24) should trump federal procedures for property seizure when state and federal agencies are working in concert under the proposed "equitable sharing programs."

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