

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 amends Section 31-27-2 entitled “Purpose of Act – Applicability – No Additional Remedies” of the Forfeiture Act.

Subsection B lists the situations to which the Forfeiture Act applies and others it does not. The bill adds the language “[e]xcept as provided in Section 31-27-11” to the beginning of the subsection.

Section 2 amends Section 31-27-7 entitled “Title to Seized Property – Disposition of Forfeited Property and Abandoned Property – Proceeds” of the Forfeiture Act.

The title of Section 31-27-7 is amended to add the word “Exemption” to the end of the title.

Subsection A is amended to add the language “except as provided in Section 31-27-11 NMSA 1978, when a law enforcement agency in New Mexico seizes property for a federal law enforcement authority as a participant in a federal equitable sharing program . . .” The subsection goes on to provide that the state acquires provisional title to the seized property.

Subsection B provides for the distribution of “forfeited currency and all proceeds of the sale of forfeited or abandoned property. Subsection (3) – which provides that any remaining balance shall be deposited in the general fund – adds the language “except as provided in Paragraph (4) of this subsection. The new paragraph (4) provides that “when a person is convicted of a drug-related crime as provided in the Controlled Substances Act, money obtained by forfeiture proceeds pursuant to Section 30-31-34 NMSA 1978 [“Forfeitures; property subject] shall be subject to appropriation by the legislature for drug treatment rehabilitation of minors and adults.

Subsection C is amended to add the quoted language that “[e]xcept as provided in Section 31-27-11”, proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.

Subsection G(2)(b) is amended to change “the owner fugitates” to “the owner was fugitated.” Subsection G lists the circumstances under which property subject to forfeiture becomes abandoned property and may be disposed of without a conviction.

Section 3 amends Section 31-27-11 entitled “Transfer of Forfeitable Property to the Federal Government” of the Forfeiture Act.

The title is amended to include the language “Expenditure of Money Disbursed by Federal Equitable Sharing Programs”.

Subsection A is amended to delete subsections (2) and (3) which provide that a law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement agency unless “the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of property; or the seized property may only be forfeited under federal law.” A new subsection (2) is added that provides “the federal government has filed criminal charges against the owner of the seized property, there is no innocent owner and the seized property is required as evidence in the federal prosecution.”

Subsection B provides that a law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act. The language “[a] law enforcement agency may share information and cooperate with the federal government.”

Subsection C is new material that provides “a law enforcement agency may participate in federal equitable sharing programs as authorized by Section 29-1-10.1 NMSA 1978 [Federal funds; receipt and expenditure for law enforcement activities] and allowed in this section; provided that no equitable sharing money shall be accepted by the law enforcement agency unless the owner of the property is convicted in federal court.”

Subsection D is new material that provides “[a] law enforcement agency participating in federal equitable sharing programs shall spend money received from a program on drug prevention or awareness programs, including costs associated with conducting law enforcement agency awareness programs.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

This bill could impact the way forfeited proceeds are distributed and handled.

SIGNIFICANT ISSUES

This bill specifically addresses participation in the federal equitable sharing program. According to the 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 bill provides that a law enforcement agency may participate in the federal equitable sharing program but no equitable sharing money shall be accepted unless the owner of the property is convicted in federal court.

The bill also allows for transfer to the federal government only if the seized property is over \$50,000 and that federal government has already filed charges, there is no innocent owner and the seized property is required as evidence.

The bill also provides that forfeiture proceeds from drug crimes shall be used by the legislature for drug treatment and rehabilitation, rather than revert to the general fund.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

n/a

TECHNICAL ISSUES

n/a

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a