

LFC Requester:	Ismael Torres
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 01/28/19
Original **Amendment** **Bill No:** HB 312
Correction **Substitute**

Sponsor: CHANDLER AND IVEY SOTO **Agency Code:** 264
Short AMENDMENTS TO **Person Writing** RVAZQUEZ
Title: FORFEITURE ACT **Phone:** 5056708484 **Email** ROSANNACVAZQU

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 312 makes amendment to the Forfeiture law. The Forfeiture law reforms were made in 2015. The reforms were graded by freedom works and were given an “A”. The only other state to receive such a high grade was North Carolina. The original bill was given an “A’ because the reforms made by the 2002 reforms require a conviction of the criminal matter prior to a forfeiture, and the money or items seized by forfeiture that are sold at auction, to be placed in the general fund. Also State and local law enforcement agencies are prohibited from engaging with the federal government in “equitable sharing” where they would receive up to 80% of the proceeds. The government, not the owner of the seized property has the burden to demonstrate with clear and convincing evidence the seized property was used in connection with the crime.

HB 312 makes some overall language changes:

1. Throughout the Forfeiture Statute, the reference to “the State” is stricken and replaced with “Law Enforcement Agency”.
2. Amends application of Forfeiture Act to apply to “all” seizures “in this state”. Pg. 2, lines 15-17.
3. Deletes definition of “abandoned property” for a definition of “disclaimed property”. Pg. 3, lines 12-15 compare to Pg.4 lines 15-17.
4. Notice provision amended from Notice for “Complaint for Ancillary Forfeiture Proceedings” to Notice “Intent to Forfeit”. Pg. 11, lines 22 – Pg. 12 line 5.

HB 312 makes substantive changes:

1. In section B, what the forfeiture Act does not apply to, adds three additional sections:
 - a. Subsection b – Animals subject to seizure for public safety reasons;
 - b. Subsection c – Real or personal property that is seized for destruction for public health and safety reasons;
 - c. Subsection d – Forfeitures that result from a lien for charges and assessments set forth in state and local law. Pg. 2., lines 22- pg. 3 line 8.
2. Expands definition of “law enforcement agency” to include district attorneys, attorney general or any other agency authorized by law to file a forfeiture action.
3. Adds a definition “knowledge” to include actual or constructive awareness that can be proved by direct or circumstantial evidence, a fact or a condition.
4. Under NMSA Section 31-7-4 – Forfeiture Conviction Required adds section B for forfeiture pursuant to local ordinance and requires that a person is subject by local

- ordinance if arrested for a felony which forfeiture is allowed, convicted of such felony and includes same standard applied to law enforcement agency “clear and convincing evidence” that property should be forfeited. Pg 6, lines 16-25. PLEASE NOTE THE WHEREAS IN STATE LAW IT IS ANY CRIME FOR WHICH A FORFEITURE IS ALLOWED, IN ORDINANCE IT IS FOR A FELONY CRIME FOR WHICH FORFEITURE IS ALLOWED.
5. Adds application of Forfeiture to “local ordinances.” See pg. 7, line 22.
 6. Time frames are added for the purpose of notice:
 - a. Five days after seizure owners of record notification of seized items by personal service or first class mail.
 - b. A defendant who has an interest in the seized property had under the original statute 60 days prior to a related criminal trial time to provide notice of a claim of interest in the forfeited property. Such time frame has changed to 120 days following the filing of a forfeiture action to request a Writ of Replevin. Pg. 9, line 17-22.
 - c. Time frame for a motion for writ or replevin was to be heard within 30 days, this amendment changes it to 60 days. Pg. 10, line 4.
 7. The Standard for granting of a defendant/claimant’s motion for relief is amended to be a two prong standard:
 - a. Defendant must show the property is their only means of paying for representation of either the criminal or civil forfeiture. (This standard was already in the Existing Forfeiture Act.); AND
 - b. Added standard of proof: The law enforcement Agency did not make a prima facie showing that the property was stolen or proceeds from or an instrumentality of a crime.
 8. Originally the Court was given discretion to release a portion of the proceeds for a legal defense, and discretion to require an accounting of legal fees. The amendment takes away discretion and requires an accounting when the Court in its discretion allows release of a portion of the seized items for legal defense. Pg. 10, lines 22-25.
 9. Additional language added when the Court releases a portion of the proceeds for a legal defense.
 - a. Requires in camera review of legal fees either during criminal or civil forfeiture.
 - b. Court will be required to have a hearing and hear arguments as to amount of legal defense payment, when the defendant is found to be guilty in BOTH the criminal and civil forfeiture.
 - c. Court will issue an Order on distribution of funds.
 10. In the section relating to the Courts ability to the granting of a Writ or Replevin, an amendment is added to further define and modify the language “any other relief the court deems just”, limiting the language to not injure an innocent owner of secured lienholder. Pg. 11, lines 18-19.
 11. Publication of the Notice of Intent to Forfeit no longer to be published. Such language deleted, mandatory publication in the Sunshine Portal. Pg. 11 line 1-5.
 12. Appeal on a forfeiture proceeding limited to appeal time from “at any time” Pg. 16, line 9.
 13. When determining the value of the seized property for purposes of the forfeiture the Court may consider relevant factors such as fair market value and includes the non-monetary value to the defendant. The language defining the non-monetary value to defendant has been amendment and now focuses more on hardship caused to defendant from loss of property. Pg. Compare pg. 17, lines 12-14 to pg. 17 lines 18-

20. This language links non-monetary value to hardship, whereas in prior language they were two differing items.
14. The State Treasurer has authority to possess property that is not currency. The amendment does two things: First it allows the State Treasurer to designate a “designee”. Pg. 18 lines 23-24. It also sets forth a procedure on distribution of funds to:
- a. Reimburse reasonable expenses for storage by law enforcement or state treasurer. NOTE: the Act does not allow law enforcement agency to hold assets, ASSETTS are required to be held in possession of court or state treasurer. THIS NEEDS TO BE AMENDED TO REFLECT PRIOR LANGUAGE.
 - b. To pay reasonable expenses incurred by law enforcement agency or State Treasurer to dispose of property. SAME AMENDMENT MSUT BE MADE.
 - c. The Act already requires the balance of the funds to be deposited in general funds, the amendment just rewrites same. See pg.19, lines 10-11 and compare to pg. 19, line 12-14.
 - d. A law enforcement agency or public body is required to notify the Auditor of reimbursed funds. Note use of law enforcement agency again.
15. The amendment adds a process for disclaimed property found and pursuant to NMSA 29-1-14 et seq. However it is important to note that such statute section is entitled “Unclaimed property” and not “disclaimed property”. Pg. 20, lines 1-3.
16. The amendment also provides a standard for disposition of disclaimed property in an instance where there is not a conviction when an innocent owner cannot be found or a trial cannot be set due to an outstanding bench warrant or a defendant is in fugitive status. Pg. 20, line 4-13.
17. In the definition of an innocent owner knowledge is changed from “actual knowledge” to “knowledge”. Pg. 22, line 10. The intent for forfeiture is found in the first section of the Forfeiture Act to “protect innocent owners holding interests in property subject to forfeiture.” Removal of “actual” to modify “knowledge” appears to be in conflict with the intent of the forfeiture act. The Forfeiture Act requires the law enforcement agency to prove by clear and convincing evidence that the property should be forfeited. Actual knowledge is defined by the court of appeals as.....

FISCAL IMPLICATIONS -NA

SIGNIFICANT ISSUES:

1. Notification through Sunshine Portal:

There is reference to the Sunshine Portal for publication of the Notice For Foreclosure and deletes notice by newspaper. However, in review of the sunshine portal the portal would need to be updated as there is no subsection that could post forfeitures. The cost of updating portal is unclear. Also for low-income defendants and their families, lack of a computer and knowledge of a sunshine portal may make finding notice and complying with such notice difficult. Pg. 13, lines 1-5

AMENDMENT LANGUAGE - NA

PERFORMANCE IMPLICATIONS – NA

ADMINISTRATIVE IMPLICATIONS - NA

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – NA

TECHNICAL ISSUES -NA

OTHER SUBSTANTIVE ISSUES - NA

ALTERNATIVES - NA

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

AMENDMENTS:

Not at this time.