

<b>LFC Requester:</b>	<b>Ismael Torres</b>
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*and*

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*{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 02/23/18  
**Original**     **Amendment**        **Bill No:** HB 312s  
**Correction**     **Substitute**   

**Sponsor:** HOUSE JUDICIARY    **Agency Code:** 264/AODA  
**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)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act : HB 312  
SUBSTITUTED BY JUDICIARY SUBSTITUTE.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

**CURRENT PROCESS THROUGH LEGISLATURE:**

HB 312S came about as a result of the House Judiciary when the original HB 312 was opposed and it was substituted by HB 312S and passed by Judiciary. A comparison of the two bills follows:

HB 312S proposes amendments to the forfeiture law NMSA 31-27-2.

HB 312S makes some overall language changes:

1. Language was added to subsection A (6), “and only pursuant to state law.” Pg. 2, line 13.
2. Language was added to subsection B (1) adds the word “all” to modify the word “seizures”. Pg. 2, line 15.
3. Additional language was added to paragraph B (1) to modify language “Forfeiture Act” with “in this state”. Pg. 2, line 17.
4. Amends application of Forfeiture Act to apply to “all” seizures “in this state”. Pg. 2, lines 15-17.
5. HB 312 had added language to the definition of “abandoned property” excluding such property from forfeiture. THIS IS NOT INLCUDED IN HB 312S, rather the statute includes abandoned property for forfeiture and is later defined in HB 312S.
6. HB 312S keeps the substantive change made in HB 312 found in NMSA Section 31-27-2 – PURPOSE OF ACT, section B,2, regarding what the forfeiture Act does not apply to, and 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. HB 312S removes the expanded definition found in HB 312, of “law enforcement agency” to include district attorneys, attorney general or any other agency authorized by law to file a forfeiture action. Also small changes within this same section are:
  - a. Moves the word “means” from line 1 to line 2. See Pg. 5, lines 1-2.
  - b. Amends and removes “that” to “who.” See, Pg. 4, line 24.
3. Definition of “property subject to forfeiture” is added and deletes “[described and]”. See Pg. 5, line 12.
4. HB 312S does not contain the definition added in HB 312 of “knowledge” to include actual or constructive awareness that can be proved by direct or circumstantial evidence, a fact or a condition.
5. Under NMSA Section 31-27-4 – Forfeiture Conviction Required
  - a. Adds language to paragraph A, “pursuant to state law” to modify “A persons property is subject to forfeiture...”. See Pg. 6-7, line 1.
  - b. HB 312 had previously added a Section B for forfeiture pursuant to local ordinance and required that a person is subject by local ordinance if arrested for a felony which forfeiture is allowed, convicted of such felony and the law enforcement agency should prove by “clear and convincing evidence” that property should be forfeited. Pg. 6, lines 16-25. THIS IS DELETED IN HB 312S.
  - c. Paragraph C is amended and now reads: **Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement to a felony.....** See Pg. 6, lines 18-21.
6. HB 312 had added application of Forfeiture to “local ordinances.” HB312S deletes such application and is not included in the substitute bill.
7. Section 31-27-4.1 RECEIPT FOR SEIZED PROPERTY is amended in HB 312S by adding a paragraph:
  - a. **b. Within five days of the seizure, the law enforcement officer shall provide notice by personal service or first class mail to all owners of record of the seized property.** See Pg. 8, lines 18-21.
  - b. Paragraph b now c as a result of the addition set forth above is amended to delete “**sixty days prior to a related criminal trial.**”; and adds “**the one hundred twentieth day following the filing of the criminal action in court.**” See Pgs. 8-9, lines 25-2.
    - i. Adds “the” to modify “seized property thought paragraph c.
    - ii. Deletes “to” and replaces with “requesting” to modify “the court to

issue a writ of replevin.

iii. Adds “seized” to modify “property” in same paragraph to describe the person who is submitting the writ of replevin’s interest in the “seized property.” Pg. 9, line 5.

c. Paragraph D in existing statute references time in which a hearing must be had for the Writ of Replevin. The HB 312S amends time frame from “30 days” to “**60 days**” from the date within which the motion is filed to have the hearing. See Pg. 9, line 9. SAME AS HB 312.

8. HB 312 added certain time frames 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. **ADDED IN HB 312S.**
- 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. **SAME IN HB 312S.**
- 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. **SAME IN HB 312S.**

9. IN HB 312 AND HB 312S, 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. AND
  - i. It is likely final judgment will require the state to return property or property not reasonably required to be held for investigatory purposes; (These standards were already in the Existing Forfeiture Act.); OR
- 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. SEE pg. 9, lines 23-25.**

10. 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. HB 312 removed all discretion and required an accounting. HB 312S returns the Court’s discretion to release a portion of the seized items for legal defense but requires an accounting. Pg. 10, lines 1-5.

- a. HB 312S adds language to same paragraph: requiring an accounting “...of reasonable legal fees shall be held before the resolution of the relevant criminal and forfeiture proceedings in-camera. If the Court finds in favor of the state in both the criminal and forfeiture proceedings, the court shall
  - i. Hear arguments;
  - ii. Issue an order on how the funds or property shall be distributed. See Pg. 10, lines 4-14. **SAME AS HB 312.**
- b. In lieu of issuing a Writ of Replevin the Court may provide other relief. HB 312S adds language “**provided that relief does not prejudice an innocent**

**owner, including a secured lienholder.”** See Pg. 10, lines 21-22.

11. NMSA 31-27-5 COMPLAINT OF FORFEITURE is amended by HB 312S:
  - a. BOTH BILLS CHANGED TITLE FROM COMPLAINT OF FORFEITURE TO **NOTICE OF INTENT TO FORFEIT**.
  - b. BOTH BILLS CHANGE Publication of the Notice of Intent to Forfeit and no longer require publication. Such language deleted in both BILLS and the mandatory publication in the Sunshine Portal remains in both. Pg. 12, lines 4-6.
12. HB 312S amends Appeal time frame to **“within the time period for filing an appeal.”** Pg. 15, lines 6-7.
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 paragraph a is deleted (value of the property to the defendant including hardship....) Pg.15, lines 9-11.
  - a. The language defining the non-monetary value to defendant has been amended and now focuses more on hardship caused to defendant from loss of property and adds **“intrinsic value of property that would cause the defendant to suffer if the forfeiture is realized.”** Lines 15-17.
14. HB 312C amends title of NMSA 31-27-7 to read as follows: **TITLE TO SEIZED PROPERTY—DISPOSITION OF FORFEITED PROPERTY AND ABANDONED PROPERTY – PROCEEDS.** PG. 17, lines 1-2.
  - a. Both HB 312 and 312S amend this section in same manner. 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. 17 lines 17-18. It also sets forth a procedure on distribution of funds to (Pg. 17, lines 20 -4 of pg. 18.:
    - i. Reimburse reasonable expenses for storage by law enforcement or state treasurer.
    - ii. To pay reasonable expenses incurred by law enforcement agency or State Treasurer to dispose of property.
    - iii. The Act already requires the balance of the funds to be deposited in general funds, the amendment just rewrites same. See Pg. 18, line 14.
  - b. A law enforcement agency is required to notify the Auditor of reimbursed funds. Note use of law enforcement agency again. Pg. 18, lines 9-12.
15. HB 312S keeps reference to “abandoned property” and requires “abandoned property” to be **“disposed of in the same manner as provided in subsection b of this Act.”** See Pg. 18, lines 19-20. (disposition through auction.)
  - a. NOTE: HB 312 added an amendment which added a process for disclaimed property found and pursuant to NMSA 29-1-14 et seq. However statute section is entitled “Unclaimed property” and not “disclaimed property”.
  - b. HB 312S provides for a process for “abandoned property” when the property

that is subject to forfeiture, and is in a law enforcement agency's possession becomes abandoned property, may be disposed of without a conviction if:

1. There is not an innocent owner
2. Criminal prosecution of the owner of seized property cannot begin within a year and one day due to a bench warrant pending or fugitive status. **HB 312 SAME.**

16. HB 312S amends 37-27.7.1 simply grammatically. Changing reference to a statute to "this statute." See Pg. 20, lines 3-4.

- a. HB 312 had changed the definition of an innocent owner's knowledge from "actual knowledge" to "knowledge". **THIS AMENDEMENT NOT INCLUDED IN HB 312S**

#### **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.

#### **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:**

Status quo.

#### **AMENDMENTS:**

Not at this time.