

LFC Requester:	
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**AGENCY BILL ANALYSIS
2015 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:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>02/29/16</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 284</u>

Sponsor:	<u>Andy Nunez</u>	Agency Code:	<u>264 (AODA)</u>
Short Title:	<u>Forfeiture Procedures and Reporting</u>	Person Writing	<u>Mary Lynne Newell</u>
		Phone:	<u>575-313-6890</u>
		Email	<u>mnewell@da.state.nm.us</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

THE BILL TITLE INDICATES IT IS MAKING AN APPROPRIATION, BUT NONE IS INCLUDED.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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: This bill rewrites existing forfeiture law to, in most relevant part to the District Attorneys, revise or set certain deadlines, allow for expenses and costs to be deducted from funds forfeited to the benefit of the law enforcement and other agencies who put in part of the work in obtaining the forfeiture, removing abandoned property from procedures related to forfeiting property; limiting factors to be considered in setting the value of forfeited property; removing the requirement that innocent owners and secured party need actual knowledge of the crime related to the seized property. It further revises distributions of proceeds from the sale of forfeited property, and currency, to allow for or not interfere with the rights of the federal government to certain proceeds without penalty to the state law enforcement agencies.

FISCAL IMPLICATIONS

It is unknown how much this proposed bill would impact the allocation of resources, and hence the budgets, of the District Attorneys’ Offices in conducting forfeiture proceedings, more than these proceedings do, already. However, law enforcement agencies are in desperate need of this fix. Current law as established by HB560 (2015 Session) neglects the administration costs associate with forfeiture and abandoned property, as well as, loss of federal funding.

SIGNIFICANT ISSUES

The changes will be beneficial in setting a time certain (30 days) for any appeal of the forfeiture decision, in setting market value as the determination of value of the forfeited property (in line with setting value for other property crimes), and in eliminating the need to prove actual knowledge of the crime in the “innocent” owner.

New provision 31-27-4.1 adds a provision that in order to raise a claim that the seized property is necessary to be returned to fund a defendant's defense, a prima facie showing of same must first be made. Then, an accounting is required when funds are split.

New section 31-27-7.1 eliminates the requirement that “innocent owners” must be proven to have had “actual knowledge” of the criminal activity, and substitutes proof that the owners “knew or should have known”, a change which will be of benefit to prosecution.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES: Scrap the entire forfeiture statute and draft something similar to federal law, with a provision to seize property administratively without judicial intervention. Proceeds or the seized property itself should go to the seizing agencies and their administrative bodies (town council, county government, etc.). The administrative agencies' attorneys would handle the cases and the District Attorneys' offices would be out of the loop.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS