

|                |               |
|----------------|---------------|
| LFC Requester: | Chenier, Eric |
|----------------|---------------|

**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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 2/23/2015  
 Original  Amendment  Bill No: HB560  
 Correction  Substitute

Sponsor: Rep. Zachary Cook Agency Code: Attorney General's Office  
 Short Relating to Forfeiture Person Writing Yvonne Chicoine  
 Title: \_\_\_\_\_ Phone: 827.6928 Email ychicoine@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY15          | FY16 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY15              | FY16 | FY17 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY15</b> | <b>FY16</b> | <b>FY17</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>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:

### **SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

### **BILL SUMMARY**

**Synopsis:** HB560 rewrites and adds new sections to the New Mexico Forfeiture Act (sections 1-13). It makes conforming amendments related to the law governing permitting requirements for excavation of archaeological sites, NMSA 1978, § 18-6-11 (section 14), and for unmarked burials, NMSA 1978, § 18-6-11.2 (section 15). Further, it makes conforming amendments to the criminal statutes governing unauthorized recordings, NMSA 1978, § 30-16B-8 (section 16), controlled substances, NMSA 1978, § 30-31-34 (section 17-18), imitation controlled substances, NMSA 1978, § 30-31A-9 (section 19), and racketeering, NMSA 1978, § 30-42-4 (section 20).

### **FISCAL IMPLICATIONS**

HB 560 may have a fiscal implications on the office of the attorney general, which investigates and prosecutes crimes implicating the Forfeiture Act.

### **SIGNIFICANT ISSUES**

1. The bill does not contemplate the various ways in which criminal actions may be initiated, i.e., by complaint, indictment or information, see, e.g., proposed § 31-27-5(A).
2. The thirty-day timetable contained in amended § 31-27-5 may be unworkable where cases are particularly complicated and may require clarification, e.g., the earlier of two dates. *See State v. Norman Benally*, No. 31,972 (N.M. Ct. App. Jan. 29, 2015).
3. The bill does not define "forfeiture" or "seizure." *See Benally*, No. 31,972, ¶ 12.
4. The bill does not appear to deal with forfeiture actions arising out of misdemeanor offenses because all provisions relate to actions being brought in district court.
5. The bill does not anticipate that criminal charges can be resolved in ways that do not result in a conviction, e.g., conditional discharge.
6. By providing that forfeiture proceedings will follow trial, the bill does not contemplate resolution of cases other than by trial; it is unclear how persons other than the criminal defendant will have notice regarding the forfeiture action where the forfeiture action follows immediately after trial.
7. Continuation of criminal proceedings so jury can consider forfeiture issues will complicate and lengthen trial procedures; may require additional evidentiary proceedings apart from resolution of criminal action.
8. Representation by the public defender in forfeiture proceedings is beyond the scope of

constitutional requirements for representation of indigent defendants.

9. The bill is not clear whether all forfeiture proceedings are subject to the rules of criminal procedure or the rules of civil procedure.

10. Consideration should be given to including provision for a reporting requirement to the office of the attorney general, see, e.g., proposed new section contained in section 11 of the bill.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

#### **TECHNICAL ISSUES**

1. Consequences of removing provision regarding seizures incident to “administrative inspection warrants” unclear. See proposed language of § 31-27-4(E)(1).

2. The bill allows for publication on “the sunshine portal” but that term is not defined.

3. Relationship of proposed § 31-27-6(H) to Forfeiture Act is unclear.

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

#### **AMENDMENTS**

N/A