



2005 ASSEMBLY BILL 40

January 25, 2005 - Introduced by Representatives BIES, ALBERS, FIELDS, GRONEMUS, GUNDERSON, GUNDRUM, HAHN, HINES, JESKEWITZ, KRAWCZYK, LEMAHIEU, MUSSER, OTT, OWENS, VAN ROY and VOS, cosponsored by Senators A. LASEE and KEDZIE. Referred to Committee on Corrections and the Courts.

1 **AN ACT to amend** 961.55 (5) (intro.), 961.55 (5) (a), 961.55 (5) (b) and 961.55 (5)
2 (c); and **to create** 961.55 (5) (e) 1. and 961.55 (5) (e) 2. of the statutes; **relating**
3 **to:** forfeiture of money derived from a drug crime.

Analysis by the Legislative Reference Bureau

Under current law, a state or local law enforcement agency may acquire certain property involved in the commission of crime through a forfeiture proceeding, which is generally initiated after the end of the criminal case to which it relates. In cases involving illegal drugs, the forfeiture law applies to the drugs themselves, materials and equipment used to process or package the drugs, vehicles used in connection with the offense, and property, including money, derived from the commission of the offense.

The Wisconsin Constitution specifies that the clear proceeds of property acquired by forfeiture must be deposited in the school fund. The provision of current law that implements this requirement permits an agency that seizes property that is later forfeited to retain 50 percent of the proceeds of the sale to cover the costs of its investigation and prosecution and other costs relating to the forfeiture proceeding and sale. But if the property seized is money, current law requires that all of the money be deposited in the school fund.

Under this bill, if money is forfeited in a drug case, the law enforcement agency that seized the money may retain 70 percent of any amount that does not exceed \$2,000 and 50 percent of any amount in excess of \$2,000 to cover the costs of its investigation and prosecution and other costs relating to the forfeiture proceeding and sale.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 961.55 (5) (intro.) of the statutes is amended to read:

2 961.55 (5) (intro.) When property is forfeited under this chapter, the agency
3 whose officer or employee seized the property ~~may~~ shall do one of the following:

4 **SECTION 2.** 961.55 (5) (a) of the statutes is amended to read:

5 961.55 (5) (a) Retain it for official use;

6 **SECTION 3.** 961.55 (5) (b) of the statutes is amended to read:

7 961.55 (5) (b) Sell that which is not required to be destroyed by law and which
8 is not harmful to the public. The agency may use ~~50%~~ 50 percent of the amount
9 received for payment of ~~all proper expenses of the proceedings for forfeiture and sale,~~
10 ~~including expenses of seizure, maintenance of custody, advertising and court costs~~
11 ~~and the costs of investigation and prosecution reasonably incurred.~~ The remainder
12 shall be deposited in the school fund as proceeds of the forfeiture. In this paragraph,
13 “forfeiture expenses” include all proper expenses of the proceedings for forfeiture and
14 sale, including expenses of seizure, maintenance of custody, advertising, and court
15 costs and the costs of investigation and prosecution reasonably incurred.

16 ~~(e) If the property forfeited is money, all the money shall be deposited~~ retain
17 the sum of all of the following for payment of forfeiture expenses, as defined in par.
18 (b), and deposit the remainder in the school fund;

19 **SECTION 4.** 961.55 (5) (c) of the statutes is amended to read:

