



Legislative Fiscal Bureau

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October 19, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 40: Forfeiture of Money Derived from a Drug Crime

On January 25, 2005, Assembly Bill 40 (AB 40) was introduced and referred to the Assembly Committee on Corrections and the Courts. The bill would modify current law related to the forfeiture of money derived from a drug crime. On February 22, 2005, the Assembly Committee recommended passage of the bill by a vote of 6 to 3. With a vote of 66 to 28, the Assembly passed the bill and messaged it to the Senate on March 10, 2005. On June 9, 2005, the Senate Committee on Judiciary, Corrections and Privacy recommended concurrence by a 3 to 2 vote. The bill was referred to the Joint Committee on Finance on September 19, 2005.

CURRENT LAW

Under current law, when property subject to seizure under the Uniform Controlled Substances Act (Chapter 961 of the Statutes) is forfeited, the law enforcement agency that seized the property may:

- a. Retain the property for official use;
- b. Sell the property which is not required by law to be destroyed and which is not harmful to the public. The agency may use 50% of the amount received for payment for all proper expenses of forfeiture and sale proceedings, including expenses of seizure, maintenance of custody, advertising, and court costs and costs of investigation and prosecution reasonably incurred. The remaining amount must be deposited into the common school fund as proceeds of the forfeiture. If the property forfeited is money, all the money must be deposited into the school fund;
- c. Require the county sheriff in which the seizure was made to take custody of the property and remove it for disposition in accordance with the law; and

- d. Forward the property for disposition.

SUMMARY OF BILL

Assembly Bill 40 would modify current law to allow law enforcement agencies, when the property forfeited from a drug crime is money, to retain for payment of forfeiture expenses the sum of: (a) 70% of any amount that does not exceed \$2,000; and (b) 50% of any amount in excess of \$2,000. Forfeiture expenses include all property expenses of the forfeiture and sale proceedings, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred. If, for example, \$3,000 in cash was forfeited, a law enforcement agency would retain \$1,900 as follows: (a) \$1,400 (\$2,000 times 70%); and (b) \$500 (\$1,000 times 50%).

FISCAL EFFECT

Fiscal estimates for AB 40 were submitted by the following agencies:

Board of Commissioners of Public Lands. The Board of Commissioners of Public Lands reports receiving \$15,813.59 relating to drug forfeitures in fiscal year 2005 for the common school fund. Of the total, \$4,291 was associated with cash forfeitures. The Board indicates that it does not believe it is receiving all the forfeited monies for the following reasons:

"There are currently 600 police departments, 33 multi-jurisdictional task forces and 72 sheriff departments that could be making cash drug seizures. In fiscal year 2005 to date there are only 8 jurisdictions sending monies to the Common School Fund."

"We have done research on the Wisconsin Circuit Court Access website and have seen cases that are Chapter 960 cash seizures, but the courts are ordering them to transfer the seized cash to other entities including the Crime Prevention Trust in Milwaukee County and the Janesville Crimestoppers."

"Our conclusion is that jurisdictions may not be aware that they are required to send the cash drug seizures to the Common School Fund, thus our receipts are much lower than they should be."

Department of Justice. The Department of Justice estimates that the bill would allow the Department to retain approximately \$30,000 annually to help cover its costs related to drug cases.

District Attorneys. In its fiscal estimate, the State Prosecutor's Office indicates that AB 40 would increase the workloads for district attorneys offices if additional actions were undertaken to

collect forfeited money on behalf of law enforcement agencies. The State Prosecutor's Office thus indicates that the actual impact of the bill, if enacted, would be monitored to determine if additional prosecutorial resources would be needed.

State Public Defender. The Office of the State Public Defender does not anticipate any fiscal effect because AB 40 does not create a new criminal offense or change penalties.

Court System. The Director of State Courts Office indicates that, while AB 40 would generate any additional court proceedings, existing court staff would absorb the increased workload.

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