TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 1901 - HB 2065

March 7, 2016

SUMMARY OF BILL: Requires a seizing agency to prove by clear and convincing evidence, rather than preponderance of the evidence, that the seized property was used in a manner making it subject to forfeiture.

Entitles a prevailing owner of property to (1) reasonable attorney fees and administrative hearing or court costs necessarily incurred in seeking the return of the seized property, (2) actual damages, and (3) interest on the fair market value of the seized property.

Requires the first 25 percent of proceeds derived from forfeitures covered by Title 40, Chapter 33, Part 2, to be remitted to the local education agency in the county where the seizure was made.

Repeals Tenn. Code Ann. § 40-33-215, which created a cause of action against a seizing agency for any person whose property was seized in bad faith.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – $16,200/Tennessee Bureau of Investigation
$119,600/Department of Safety

Increase Local Revenue – $135,800

Other Fiscal Impact – Recurring shifts of local revenue from local law enforcement agencies to local education agencies. Twenty-five percent of forfeiture proceeds derived from forfeitures covered by Title 40, Chapter 33, Part 2 will shift from local law enforcement agencies to local education agencies.

Assumptions:

- Civil forfeiture is a legal process in which law enforcement agencies take assets suspected of involvement in criminal or illegal activity. Civil forfeiture can be initiated even if the property owner has not been charged with any criminal or illegal activity.

- Civil forfeiture actions are in rem—i.e., they are actions brought against property or a property interest and not against an individual. *Stuart v. State Dept. of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998).
- Under current procedure, law enforcement agencies can seize property for which probable cause exists that the property was used or involved in criminal or illegal activity and file a civil forfeiture action.
- The seizing agency must prove by a preponderance of the evidence that the property was used in a manner making it subject to forfeiture. The property owner has the burden to prove that the property was not involved.
- The bill requires the state to prove by clear and convincing evidence that the property was used in a manner making is subject to property.
- Preponderance of the evidence requires the truth of the facts asserted be more probable than not. *Teter v. Republic Parking Sys.*, 181 S.W.3d 330, 341 (Tenn. 2005). The clear and convincing evidence standard is more stringent than the preponderance of the evidence standard. "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992).
- Proving the property was used in a manner making it subject to forfeiture will require more effort than the preponderance of the evidence standard. However, it is assumed that the additional effort will not substantially impact seizing agencies or forfeiture proceedings.
- The bill entitles a prevailing owner of property to (1) reasonable attorney fees and administrative hearing or court costs necessarily incurred in seeking the return of the seized property, (2) actual damages, and (3) interest on the fair market value of the seized property.
- It is assumed that the seizing agency will prevail in forfeiture proceedings that they prosecute to the fullest extent. It is assumed that the bill will not result in a significant increase in state or local expenditures from paying attorney fees or costs incurred on behalf of the property owner.
- The bill requires the first 25 percent of proceeds derived from forfeitures covered by Title 40, Chapter 33, Part 2, to be remitted to the local education agency in the county where the seizure was made. This provision would not apply to proceeds derived from seized property transferred to a federal law enforcement agency and distributed through the equitable sharing program. Those proceeds are not derived from forfeitures covered by Title 40, Chapter 33, Part 2.
- Data from the Tennessee Bureau of Investigation (TBI) indicates that the TBI receives approximately $64,720.43 each year from proceeds derived from forfeitures covered by Title 40, Chapter 33, Part 2. Data from the Department of Safety (DOS) indicates that the Department receives approximately $478,471.75 each year from proceeds derived from forfeitures covered by Title 40, Chapter 33, Part 2.
- The bill will result in a recurring decrease in state revenue to the TBI of $16,180.11 ($64,720.43 x 25.0%) and a recurring decrease in state revenue to the DOS of $119,617.94 ($478,471.75 x 25.0%), for a total recurring decrease in state revenue of $135,798.05 ($16,180.11 + $119,617.94).
- The bill will shift local revenue from local law enforcement agencies to local education agencies. Twenty-five percent of forfeiture proceeds derived from forfeitures covered by

Title 40, Chapter 33, Part 2 by local law enforcement agencies will shift to local education agencies.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee

Krista M. Lee, Executive Director

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