

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 316 - HB 421

February 26, 2017

SUMMARY OF BILL: Creates the Asset Forfeiture and Disposition of Seized Property Act (the Act) to apply to all seizures and forfeitures occurring after July 1, 2017. The Act is intended to transition Tennessee from a civil forfeiture procedure to a criminal forfeiture procedure.

The Act authorizes the forfeiture of a person's property if (1) the person was arrested for an offense to which forfeiture applies, (2) the person is convicted in a court of competent jurisdiction of a criminal offense for which forfeiture is applicable, and (3) the state establishes by clear and convincing evidence that the property is subject to forfeiture.

The Act authorizes a court to order a person to forfeit property acquired through commission of an offense, property directly traceable to property acquired through the commission of an offense, and any instrumentality the person used in the commission of an offense.

The Act authorizes law enforcement agencies to seize property subject to forfeiture prior to a conviction, but the property must be held until a forfeiture proceeding has been conducted. Forfeiture proceedings are ancillary to criminal prosecutions and do not begin until the criminal prosecution has concluded.

The Act establishes procedures for a person to protest the forfeiture.

The Act requires all forfeited currency, all sale proceeds from the sale of forfeited or abandoned property, and all proceeds from the sale of forfeited property received by the state from another jurisdiction to be deposited in the Asset Forfeiture Trust Fund, which is created within the Office of the State Treasurer.

The Act prohibits a law enforcement agency from directly or indirectly transferring seized property to a federal law enforcement authority or other federal agency unless the value of the seized property exceeds \$50,000, the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property, or the seized property may only be forfeited under federal law.

The Act requires all proceeds returned to a law enforcement agency by the United States Attorney General through the Department of Justice's Asset Forfeiture Program to be deposited into the Asset Forfeiture Trust Fund.

ESTIMATED FISCAL IMPACT:

**Decrease State Revenue – \$1,872,300/State Law Enforcement Agencies
\$539,800/Division of Administrative Procedures**

Increase State Revenue – \$748,900/Asset Forfeiture Trust Fund

Decrease State Expenditures – \$539,800/Secretary of State

Decrease Local Revenue – \$3,757,200

Assumptions:

Civil Forfeiture and the Equitable Sharing Program

- Civil forfeiture is a legal process in which law enforcement agencies seize assets suspected of being involved in criminal or illegal activity. Civil forfeiture may 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, a law enforcement agency may seize property for which probable cause exists that the property was used or involved in criminal or illegal activity. The law enforcement agency files a civil forfeiture action. The property owner then has the burden to prove that the property was not involved in the commission of the offense.
- When the law enforcement agency is a state entity, e.g., the Tennessee Bureau of Investigation (TBI), the Department of Safety, and the Tennessee Alcoholic Beverage Commission (ABC), the forfeiture action is filed with the Secretary of State’s Division of Administrative Procedures (Administrative Procedures).
- Administrative Procedures bills state entities as follows:
 - The law enforcement agency is charged a \$200 docketing fee for each matter placed on Administrative Procedures’ dockets. The first two hours of judicial work are drawn against this fee.
 - Any additional judicial time is billed at a rate of \$200 per hour.
- A law enforcement agency may also transfer the property to the federal government, which may institute forfeiture proceedings under the federal procedures. The monies from these federal proceedings are deposited into the Assets Forfeiture Fund of the Department of Justice (DOJ) established by the Comprehensive Crime Control Act of 1984, 98 Stat. 1837 (1984). These funds are distributed to state and local law enforcement agencies by the Attorney General (21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a) through the Equitable Sharing Program.
- The intent of the federal program is to assure that the property transferred to a state or local law enforcement agency has a value that bears a reasonable relationship to the degree of direct participation of the state or local agency and to “encourage further

cooperation between the recipient state or local agency and Federal law enforcement agencies”. 21 U.S.C. § 881(e)(3); *see* Department of Justice, Criminal Division, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* 1 (2009).

- The Act could substantially impact Tennessee’s participation in the Equitable Sharing Program.
- First, the Act requires all proceeds from forfeitures, including those received from the Equitable Sharing Program, to be deposited in the Asset Forfeiture Trust Fund. Federal law does not require the forfeiture proceeds to be used for law enforcement purposes. However, a DOJ policy does require the proceeds to be used for law enforcement purposes.
- The Act could result in the DOJ prohibiting Tennessee law enforcement agencies from participating in the Equitable Sharing Program.
- Second, the Act limits property that can be transferred to a federal law enforcement authority to property worth more than \$50,000. This will substantially limit law enforcement agencies’ participation in the Equitable Sharing Program as there will not likely be a significant number of seized properties that are worth more than \$50,000.
- The Act changes the state’s current procedure in three significant ways:
 - It requires a conviction or guilty plea before seized property can be forfeited;
 - It prohibits state and local law enforcement agencies from transferring seized property to a federal law enforcement agency except in limited situations; and
 - It requires forfeiture actions to be filed in the court having venue for the related criminal matter.

Requiring a Conviction and Limiting Transfer to Federal Law Enforcement

- Requiring a conviction before property may be forfeited will result in less property being forfeited. Property can currently be forfeited even if the owner of the property was not charged with any criminal conduct. Requiring a conviction will result in only property belonging to a criminal defendant being subject to forfeiture.
- In FY14-15, state law enforcement agencies received approximately \$1,266,263 in payments from the Equitable Sharing Program, and local law enforcement agencies and drug task forces received approximately \$3,757,160 in payments from the Equitable Sharing Program.
- In the same fiscal year, state and local law enforcement agencies deposited approximately \$7,489,005 (25 percent state deposits and 75 percent local deposits) in seized property into the Equitable Sharing Program. It is assumed that state law enforcement agencies and drug task forces seize approximately \$1,872,251 ($\$7,489,005 \times 0.25$) and that local law enforcement agencies seize approximately \$5,616,754 ($\$7,489,005 \times 0.75$) in currency and property each year.
- It is assumed that 40 percent of current forfeiture actions result in the owner being convicted of a crime. Thus, the Act will reduce forfeiture revenue by 60 percent.
- It is assumed that \$1,872,251 of currency and property forfeited each year to state law enforcement agencies will decrease to \$748,900 ($\$1,872,251 \times 0.4$), but the recurring decrease in revenue to state law enforcement will be \$1,872,251 as a result of the Act.
- The Act requires all recurring forfeiture proceeds to be deposited in the Asset Forfeiture Trust Fund. Thus, the estimated \$748,900 in property that will still be subject to

forfeiture under the Act will go to the Asset Forfeiture Trust Fund and be realized as a recurring increase in state revenue.

- It is assumed that most local law enforcement agencies do not have the resources to prosecute forfeiture actions or a sufficient number of forfeiture actions to justify hiring personnel to prosecute the actions.
- It is assumed that all local law enforcement agencies transfer their qualifying, seized property to a federal law enforcement agency.
- The Act requires all forfeiture proceeds, even those from the efforts of local law enforcement, to be deposited in the state Asset Forfeiture Trust Fund. It is assumed that local law enforcement agencies will not hire personnel to prosecute these matters because they will not receive any of the proceeds.
- It is assumed that local forfeiture revenues will all but cease.
- The Act will result in a recurring decrease in local revenue of \$3,757,160.

Requiring Forfeiture Actions in Court Having Venue for Criminal Matter

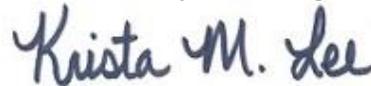
- The Secretary of State bills the Department of Safety approximately \$539,820 each year through its Administrative Procedures Division. The Secretary of State reports that it would decrease its expenditures by the same amount of revenue lost by the Act.
- The Secretary of State would reduce its recurring expenditures by \$539,820, which would likely result in a decrease of four administrative law judges and two support staff positions.
- The Department of Safety, however, will not realize a significant decrease in expenditures. Safety will still prosecute forfeiture matters, but the \$539,820 will be paid to various courts across the state rather than to Administrative Procedures.

Asset Forfeiture Trust Fund

- The Act creates a trust fund within the Treasury to hold proceeds from forfeiture actions. Funds may be expended to reimburse property owners for property wrongfully forfeited.
- Further, funds may be expended for Treasury's activities relative to the fund.
- It is assumed that the impact on the Treasury is not significant.

CERTIFICATION:

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



Krista M. Lee, Executive Director

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