



## Fiscal Estimate Narratives

DOJ 6/29/2017

LRB Number	17-2167/1	Introduction Number	AB-0122	Estimate Type	Original
<b>Description</b> forfeiture of property seized in relation to a crime					

### Assumptions Used in Arriving at Fiscal Estimate

This bill modifies current law relating to the forfeiture of property seized in relation to a crime by a state or local law enforcement agency in Wisconsin.

#### Transfer of Seized Property to Federal Law Enforcement Agencies

Under the bill, law enforcement agencies in Wisconsin would be prohibited from transferring seized property to a federal law enforcement agency for the purposes of forfeiture unless the seized property includes more than \$50,000 in currency or the property may only be forfeited under federal law. Under current law, there are no state law restrictions on the transfer of property to federal agencies but federal law and federal policies allow for federal adoption of property seized by state and local law enforcement agencies only if the seizure occurred as part of a joint operation or by a joint taskforce that includes federal law enforcement, or the property directly relates to public safety concerns including firearms, explosives and child pornography.

This restriction may conflict with federal court orders related to the disposition of seized property and creates confusion related to property seized during joint federal-state operations. Under the bill, law enforcement officers and agencies in Wisconsin would be specifically prohibited from transferring property seized by an intergovernmental joint task force to a federal agency. Currently, there are several established joint task force operations comprised of state, local and federal law enforcement officers focusing on drug trafficking organizations and other complex cases that require federal assistance. Under the bill, a state or local law enforcement officer who seizes property during a joint operation would be prohibited from turning over the property to a participating federal agency for forfeiture purposes, although property seized during the same operation by a federal law enforcement officer would be forfeited as a federal seizure.

Although the exact impact of the bill is unclear due to these conflicts, it is assumed in the estimate that the Department of Justice (DOJ) and other state and local law enforcement agencies will no longer receive any proceeds of seizures through equitable sharing arrangements with federal agencies.

Over the last five years, DOJ has expended approximately \$1 million annually from federal asset forfeiture revenues to support the law enforcement activities of the Division of Criminal Investigation, including funding for overtime hours, training, supplies and equipment for cleanup of clandestine drug labs, drug investigation buy funds and vehicle costs.

Although revenue amounts are not available on a consistent fiscal year basis, data collected through 2013 by the Institute for Justice on the distribution of equitable sharing proceeds to Wisconsin agencies indicates that the bill will reduce revenue to other state and local law enforcement agencies in Wisconsin by \$2.5 - \$3.5 million annually.

The substitute amendment to AB 122 allows for equitable sharing in certain circumstances. With the adoption of this substitute amendment, the impact is indeterminate.

#### Changes to State Forfeiture Provisions

Under the bill, property seized by a law enforcement agency in Wisconsin may be forfeited only after a person has been convicted of the crime related to the property and the court finds that the property to be forfeited is proportional to the crime committed based on criteria specified in the bill.

Under current law, all defendants have the right to tie their forfeiture to a criminal case and delay any judicial decision related to the property until after criminal proceedings have been concluded. The court is

mandated by state law to accept that request from a defendant. However, the bill does not address the forfeiture of seized property that is not tied to a specific defendant, for example, drugs, currency and property seized from a drug stash house when no criminal defendant is present and ownership is not claimed by other parties. The fiscal impact of this provision is indeterminate.

Under current law, both U.S. Supreme Court and Wisconsin appellate court decisions require circuit courts to consider whether a forfeiture is constitutionally excessive before issuing an order of forfeiture. The standard for assessing excessiveness in these previously held court decisions is easier to apply than the vague proportionality standards in the bill. This provision may result in an indeterminate increase in prosecution costs related to the determination of proportionality.

Under the bill, all proceeds from property forfeitures will be deposited into the common school fund. Under current law, law enforcement agencies may retain up to 50 percent of forfeiture proceeds, excluding currency, to reimburse the direct expenses incurred by the agency related to the seizure, including the costs of maintaining custody of the property, advertising and court costs, and the costs of the investigation and prosecution. All currency forfeitures and remaining proceeds from property forfeitures are deposited into the state school fund. There is no fiscal impact on DOJ for this provision because the department has not retained proceeds of forfeitures under state law to reimburse incurred costs. The fiscal impact on local law enforcement agencies is indeterminate because data on the retention of state asset forfeiture proceeds is not available.

The bill allows a court to order the return of the seized property to the person until the final judgment in the related criminal case and allows a person who prevails in a forfeiture action to recover attorneys' fees from the state. The bill prohibits the forfeiture of property that is owned by an innocent party and specifies that the state has the burden of proof by clear and convincing evidence that the party had actual or constructive knowledge of the underlying crime, or that the property was subject to forfeiture at the time of purchase. The fiscal impact of these provisions is indeterminate.

### **Long-Range Fiscal Implications**