

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 0077-02
BILL NO. Perfected SCS for SBs 5 & 21
SUBJECT: Criminal Procedure; Property, Real and Personal
TYPE: Original
DATE: April 4, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
School Building Revolving Fund	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>All</u> State Funds	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Drug Forfeiture Fund	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses
This fiscal note contains 5 pages.

FISCAL ANALYSIS

ASSUMPTION

The **Office of Prosecution Services, Office of the State Auditor, Office of the State Courts Administrator**, and the **Office of the State Public Defender** assume the proposed legislation would have no fiscal impact on their respective agencies.

In response to similar legislation from this year, officials from the **Office of the Attorney General** assumed the proposed legislation would have no fiscal impact on their agency.

The **Department of Public Safety - Divisions of Fire Safety, Liquor Control, Office of the Adjutant General, Capitol Police** and the **Director's Office** all assume proposed legislation would have no fiscal impact on their respective agencies.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state that according to the Division of Drug and Crime Control, \$8.1 million from federal forfeiture proceedings were disbursed to Missouri in January through September of 1999. U.S. Department of Justice statistics show that over 5 years, it has returned more than \$31 million to law enforcement agencies in Missouri. The MHP states that most of the proposals in the proposed legislation are already being carried out. Little, if any, additional revenue would be raised, and much of that could be negated if access to federal forfeitures is reduced. This would mean that additional general revenue dollars would have to be appropriated to continue narcotics enforcement work, which is currently supported by federal forfeiture monies. This would have an effect on Total State Revenue.

Officials from the **Department of Public Safety - State Water Patrol (DWS)** state that they generally have less than \$100,000 in seizure funds and that they annually report to the Department of Treasury and the Department of Justice the expenditures and cash/property received. The DWS assumes the cost of an independent audit of their agency would be roughly \$1,500.

Oversight assumes the State Water Patrol could absorb that cost within current budgetary constraints.

Officials from the **Department of Natural Resources** assumed State Park Rangers were not involved with forfeitures. DNR assumes if they would become involved in the future, the department could be affected.

The **Department of Elementary and Secondary Education** assumes the proposed legislation could increase the amount of money (forfeitures) to the School Building Revolving Fund to be

ASSUMPTION (continued)

available to districts for facility construction at a low interest rate. The extent of this increase is unknown. Under current law, FY 2001 fines and forfeitures receipts into the School Building Revolving Fund are estimated to be \$200,000. There is no effect on the state foundation formula.

Oversight assumes this proposal would increase the number of forfeitures made under state forfeiture laws and decrease the number of forfeitures made under federal forfeiture laws. As a result, state and local law enforcement agencies would lose revenue. The amount of loss is unknown; however, based on historical amounts, the losses could exceed \$1 million to the Drug Forfeiture Fund and \$1 million to local government funds. These funds would be directed to the State School Building Revolving Fund. It should be noted that federal laws allow forfeitures in cases where state law would not allow seizure and forfeiture. Oversight assumes the overall net impact to state funds would be an unknown positive amount.

Oversight notes that any increases in fines which would go to school districts would be offset by reduced payments to those districts through the State Foundation Formula. Oversight assumes there will be substantial compliance with the law and fine revenue will be minimal.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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SCHOOL BUILDING REVOLVING FUND

Increase in forfeiture revenue	Unknown	Unknown	Unknown
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FEDERAL FUNDS

Drug Forfeiture Fund			
Loss of forfeiture revenue	(Unknown)	(Unknown)	(Unknown)

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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Loss of forfeiture revenue	(Unknown)	(Unknown)	(Unknown)
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal revises various provisions of the Criminal Activity Forfeiture Act (CAFA). The proposal defines "seizure" as the point at which an officer or agent discovers and exercises any control over the property, including detaining anyone from leaving the scene of an investigation while in possession of the property. "Seizing agency" is defined as the agency that primarily employs the officer or agent that seized the property, including any agency in which anyone is acting on behalf of the agency is employed by the state or any political subdivision. The proposal amends the requirement for transfer of a case to a federal agency, upon showing that activity giving rise to the seizure involves more than one state, or when it is reasonably likely that federal criminal charges will be filed, based on a written statement of intent to prosecute from the U.S. Attorney with jurisdiction.

Law enforcement must report all seizures to the prosecuting attorney or the Attorney General, and to the state auditor. The prosecuting attorney and Attorney General shall file an annual report regarding the seizure activity to the Department of Public Safety, and to the State Auditor, by January 31. The State Auditor shall make an annual report to the General Assembly by February 28, compiling the various data received. Intentional or knowing failure to comply with these reporting requirements shall be a Class A misdemeanor, punishable by a fine up to \$1,000.

No property may be transferred to a federal agency without judicial approval, regardless of the identity of the seizing agency. Law enforcement agencies using the federal forfeiture system must file an annual audit with the state auditor's office. Intentional or knowing failure to comply with the auditing requirement of this section shall be a Class A misdemeanor, punishable by a fine up to \$1,000. Any property seized by a law enforcement officer or agent shall not be disposed of pursuant to the unclaimed or abandoned property statutes, unless a CAFA proceeding is unsuccessful.

This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

RAS:LR:OD:005 (9-94)

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SOURCES OF INFORMATION

Office of Prosecution Services
Office of State Courts Administrator
Office of the State Public Defender
Office of the Attorney General
Department of Elementary and Secondary Education
Office of State Auditor
Department of Natural Resources
Department of Public Safety
Director's Office
Division of Fire Safety
Division of Liquor Control
Division of Capitol Police
Missouri Highway Patrol
Missouri Water Patrol
Office of the Adjutant General



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