

TO: All Legislature

FROM: Senators David Craig, Stephen Nass, and Robert Wirch

Representatives Gary Tauchen, Adam Jarchow, and Fred Kessler

RE: Co-Sponsorship LRB-1662/2: relating to: forfeiture of property seized in relation to a crime.

DATE: 19 January 2017

Deadline for Co-Sponsorship: 5pm on Wednesday, January 25th.

The 5th Amendment states that no person shall “be deprived of life, liberty, or property, without due process of law”. Unfortunately, under modern civil asset forfeiture processes there is no guarantee of the due process promised by the Constitution, allowing private property to be seized and sold by the state even if the owner has not been convicted of a crime.

A report by the Institute for Justice entitled ["Policing for Profit"](#) noted that civil asset forfeiture programs ignore the innocent until proven guilty standard and require that “owners bear the burden of establishing their innocence” and that “the combination of tremendous financial incentives and limited protections creates a situation ripe for abuse”.

This legislation is an important step in restoring the protections guaranteed by the Constitution and is modeled off of legislation passed in a number of other states and shares reforms sought at the federal level by Congressman Jim Sensenbrenner in the DUE PROCESS ACT OF 2016.

Should you wish to be added on as a co-sponsor of this legislation, please reply to this email prior to 5pm on Wednesday, January 25th. Should you have any questions, please feel free to contact Sam Hope in Senator Craig’s office (6-5400).

Analysis by the Legislative Reference Bureau

This bill changes the procedure for forfeiture of property after it has been seized in relation to a crime. Under current law, the state or a local law enforcement agency may acquire certain property involved in the commission of a crime or seized in relation to a criminal investigation through a forfeiture proceeding. The forfeiture law applies to all property directly or indirectly derived from or used for the commission of a crime. This bill allows property to be subject to forfeiture only after a person has been convicted of the crime related to the forfeiture action and only if a court finds that the property seized is proportional to the crime committed. If the person is acquitted or the charges against the person are dropped, the court must order that his or her property be returned within 30 days. The bill requires seized property to be returned to innocent owners of the property unless the owners were involved with or knowledgeable about the crime related to his or her property. Further, the bill allows the court, upon petition by a person whose property was seized but not yet forfeited, to return the property to the person under certain circumstances. Under the bill, the person may not sell, give away, or burden the property and, if the person is found to have committed the crime related to the property, must surrender the property for forfeiture after conviction. This bill also allows a person who prevails in a forfeiture action to recover reasonable attorney fees from the state.

This bill requires that all proceeds from the sale of all forfeited property be turned in to the state school fund. It also prohibits local law enforcement agencies from transferring property to

federal agencies for forfeiture under federal law unless the value of the property exceeds \$50,000 or the property can be forfeited only under federal law.

Under current law, forfeiture proceedings may proceed prior to an actual conviction in a criminal case, and any seized property will be held by the law enforcement agency until the case is finished.

Under current law, after a court orders that property be forfeited, an agency may keep certain property for its own use, transfer the property to another agency, or sell the property. The agency that seized the property may retain a set percentage of the proceeds of selling the property to cover administrative and other costs and the remainder goes into the state school fund. In addition, current law allows local law enforcement agencies to enter into agreements with federal authorities wherein property that is seized in relation to a federal crime is turned over to the federal authorities for forfeiture under federal law. Proceeds from selling the property are then shared between the federal authorities and local law enforcement agencies.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.