



**Colorado
Legislative
Council
Staff**

SB17-136

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0173 **Date:** February 13, 2017
Prime Sponsor(s): Sen. Neville T.; Kagan **Bill Status:** Senate Judiciary
 Rep. Herod; Humphrey **Fiscal Analyst:** Chris Creighton (303-866-5834)

BILL TOPIC: REPORTING AND LIMITING CIVIL FORFEITURE

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	See State Revenue section.	
Cash Funds		
State Expenditures	<u>\$216,492</u>	<u>\$167,591</u>
General Fund	177,034	122,870
Cash Funds	5,608	1,500
Centrally Appropriated Costs	33,850	42,471
TABOR Impact	See TABOR Impact section.	
FTE Position Change	1.5 FTE	2.0 FTE
Appropriation Required: \$182,642 Multiple Departments (FY 2017-18).		
Future Year Impacts: Ongoing revenue impacts and expenditure increase.		

Summary of Legislation

This bill makes the following changes to the statutory civil forfeiture process:

- The Division of Criminal Justice in the Department of Public Safety (DPS) is required to establish and maintain a website containing information related to property seized and the use forfeiture proceeds.
- Each agency involved in the seizure of property (seizing agencies) must update the website and is subject to a \$10,000 civil fine if updates are not provided in a timely manner (within 30 days of when the update is due).
- This bill prohibits seizing agencies from entering into agreements to transfer or refer seized property to a federal agencies unless the property seized includes currency in excess of \$100,000.
- The DPS is authorized to charge a fee when a seizing agency updates information on the website to cover the cost of developing and maintaining the website. These fees are to be deposited into the Forfeiture Reporting Cash Fund created by this bill.
- The Office of the State Auditor (State Auditor) must perform a financial audit of records related to property seizure annually. This is to be submitted to the Legislative Audit Committee and the General Assembly by December 1, 2019, and each December 1 thereafter.

- The DPS is required to submit a report summarizing seizure and forfeiture activity in the state to the Governor, Attorney General, and General Assembly by December 31, 2019, and each December 31 thereafter.
- The Department of Human Services is required to prepare an annual accounting report of moneys received from the distribution of personal property profits.

State Revenue

This bill is expected to both increase and decrease state revenue as described below.

Seizure and forfeiture website fees. The DPS is required to create a fee to be assessed to agencies updating the website to cover the direct and indirect costs of developing and maintaining the seizure and forfeiture website. Because this fee has yet to be created and the amount revenue generated will vary based on the reporting of seizing agencies, the exact amount of revenue generated by this fee is unknown. All fee revenue generated will be deposited into the Forfeiture Reporting Cash Fund.

Fines. This bill creates a civil fine of \$10,000 for any agency that fails to update the seizure and forfeiture website in a timely manner without good cause. Due to the large penalty, this analysis assumes a high level of compliance. Revenue generated by this fine will be deposited into Forfeiture Reporting Cash Fund revenue.

Lost forfeiture revenue. Under this bill, state agencies will not enter into agreements with federal agencies unless the property seized includes currency in excess of \$100,000. Currently, much of the seizure related work performed by the Colorado State Patrol and the Colorado Bureau of Investigation in the DPS is done through participation with federal task forces. This bill is expected to reduce the DPS cash fund revenues by approximately \$100,000 per year based on the number of seizures, the estimated value, and the state's share of seized assets for the last two years.

TABOR Impact

This bill both increases and decreases state cash fund revenue from multiple sources of revenue, which will impact the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill impacts the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will be impacted by an identical amount.

State Expenditures

This bill increases state expenditures by \$216,492 and 1.5 FTE in FY 2017-18 and \$167,591 in FY 2018-19 and 2.0 FTE. These costs are shown in Table 1. Workload and costs are also increased in various state agencies. These impacts are discussed below.

Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$90,728	\$120,970
FTE	1.5 FTE	2.0 FTE
Operating Expenses and Capital Outlay Costs	11,306	1,900
Liquor Enforcement Evidence Management Program	5,608	1,500
Website Development and Maintenance	75,000	750
Centrally Appropriated Costs*	33,850	42,471
TOTAL	\$216,492	\$167,591

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Public Safety. The DPS expenditures increase by \$90,728 and 1.5 FTE in FY 2017-18, and \$120,970 and 2.0 FTE in FY 2018-19 and beyond. This is for two positions to research available programs and to assist in the development of the seizure and forfeiture website. These positions will train seizing agencies on reporting requirements, provide technical assistance to them, and develop data collection methodologies, required reports, and policies and procedures for the tracking of system entries and the levying of fees and fines from seizure agencies. Costs for these positions in FY 2017-18 reflect a September 1, 2017, start date and the General Fund paydate shift.

This bill also increases General Fund costs in the DPS to develop the required website. For FY 2017-18 \$75,000 is needed to develop the website. This estimate is based on 500 hours of developer work at a rate of \$150 per hour. This work will be conducted by the Office of Information Technology using reappropriated funds from the DPS.

It is assumed that these DPS costs will be paid through the General Fund in the first year. To the extent that already seized assets can be used to cover these costs, the General Fund impact in year one will decrease. Costs will further decrease beginning in FY 2018-19, and beyond to the extent that Forfeiture Reporting Cash Fund revenue generated from fines and fees can be used. Any cash fund offsets will be handled through the annual budget process.

Department of Revenue. To implement this bill, the Department of Revenue requires \$5,608 in FY 2017-18 and \$1,500 in FY 2018-19. FY 2017-18 costs are to update the liquor enforcement evidence management program to track seizure and forfeiture proceed data and to interface with the seizure and forfeiture website. Costs in FY 2018-19 and beyond are for IT maintenance. These costs were estimated by the program vendor and will be paid using Liquor Enforcement Division and State Licensing Authority Cash Funds.

Department of Revenue workload and costs are also increased to report on the receipt and use of forfeited funds. It is believed that this impact can be accomplished within existing appropriations and that costs will be paid using forfeited proceeds. Funding will be requested through the annual budget process, if needed.

Judicial Department. Under this bill, if a seizing agency fails to provide updated information in a timely manner, the agency is ineligible to receive any forfeited property or proceeds until the updated information is filed and is subject to a civil fine. The DPS will provide notification of such ineligibility to the clerk of each district court. Tracking this ineligibility is expected to

increase district court clerk workload. The civil fine penalty may increase the number of petitions for review filed in district court. This analysis assumes a high level of compliance and therefore this impact will be minimal.

Department of Human Services. This bill requires the Department of Human Services to prepare an annual report of moneys received from the distribution of personal property profits. The Office of Behavioral Health currently prepares such a report, however workload may increase by a minimal amount to update this report to meet the requirements in this bill.

Department of Local Affairs. Currently, the Division of Local Government in the Department of Local Affairs compiles forfeiture reports from each judicial district and law enforcement agencies. These reports will now be required to be posted on the DPS seizure and forfeiture website thus decreasing workload to the Department of Local Affairs. On average 17 reports are collected per year and minimal staff time is needed for this purpose, therefore this workload decrease will not result in decreased appropriations.

Other state agencies. This bill impacts other state agencies that participate in seizure activities. Workload for these agencies is increased to report on the receipt of and use of forfeited proceeds and costs are increased to pay the fee for updating the website. This includes the Departments of Law, Corrections, and Natural Resources. It is assumed that this workload can be accomplished within existing appropriations and to the extent possible, costs will be paid using forfeited proceeds. Should additional appropriations be needed by any of these agencies, they will be requested through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$14,088	\$17,624
Supplemental Employee Retirement Payments	8,130	10,840
Indirect Costs	11,632	14,007
TOTAL	\$33,850	\$42,471

Local Government Impact

This bill impacts increases local government costs for law enforcement agencies and district attorneys in the several ways. First, staff time and administrative costs are increased to report on the receipt and use of forfeited funds. Second, expenses are increased to pay the fee for updating the website. It is assumed that these fees will be paid using the forfeited assets, thereby reducing the amount of assets received and available for other uses. Third, the limiting of transfers to the federal government unless currency exceeds \$100,000 may reduce local government agency participation with federal agencies. Conversely for local governments that do participate in

forfeiture activities, this bill may reduce their ability to recover the cost of participation. These impacts will vary by local government, depending on the level of their involvement in forfeiture activities and the amount of funding seized from those activities.

Under this bill, if a seizing agency fails to provide updated information in a timely manner, the agency is ineligible to receive any forfeited property or proceeds until the updated information is filed, and is subject to a civil fine. This decreases seizing agency revenue related to seizure activity during the ineligibility period. Additionally costs are increased for the seizing agency to pay the \$10,000 fine if it is assessed on them. This analysis assumes a high level of compliance due to the large penalty, therefore any impacts will be minimal.

Technical Note

This bill requires the State Auditor to perform an annual financial audit of records related to an inventory of property seized and the expenditure of forfeiture proceeds. Under current law, the State Auditor is only authorized to audit state agency records.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed. It applies to seizures conducted on or after this date.

State Appropriations

For FY 2017-18 this bill requires the following appropriations:

- \$177,034 General Funds and an allocation of 1.5 FTE to the Department of Public Safety. Of this, \$75,000 is reappropriated to the Office of Information Technology; and
- \$5,608 from the Liquor Enforcement Division and State Licensing Authority Cash Fund to the Department of Revenue.

State and Local Government Contacts

Agriculture	Municipalities
Corrections	Public Defenders
Counties	Public Safety
District Attorneys	Regulatory Agencies
Department of Human Services	Department of Revenue
Information Technology	Sheriffs
Judicial	State Auditor
Local Affairs	