



## Legislative Council Staff Nonpartisan Services for Colorado's Legislature

# Fiscal Note

<b>Drafting Number:</b>	LLS 24-0464	<b>Date:</b>	February 1, 2024
<b>Prime Sponsors:</b>	Rep. DeGraaf Sen. Baisley	<b>Bill Status:</b>	House Judiciary
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**Bill Topic:** **CIVIL FORFEITURE REFORM**

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill makes changes to civil forfeiture procedures in courts. The bill will decrease state revenues, increase state expenditures, and divert state revenue beginning in FY 2024-25.

**Appropriation Summary:** The bill requires an appropriation of \$277,425 to the Department of Local Affairs.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 24-1023**

		<b>Budget Year FY 2024-25</b>	<b>Out Year FY 2025-26</b>
<b>Revenue</b>	Special Prosecution Custodial Fund	(\$94,000)	(\$94,000)
	<b>Total Revenue</b>	<b>(\$94,000)</b>	<b>(\$94,000)</b>
<b>Expenditures<sup>1</sup></b>	General Fund	\$277,425	\$277,425
	<b>Total Expenditures</b>	<b>\$277,425</b>	<b>\$277,425</b>
<b>Diversion</b>	Law Enforcement Comm. Services Grant Fund	(\$277,425)	(\$277,425)
	Forfeiture Defense Cash Fund	\$277,425	\$277,425
	<b>Net Diversion</b>	<b>\$0</b>	<b>\$0</b>
<b>Other Budget Impacts</b>	General Fund Reserve	\$41,614	\$41,614

<sup>1</sup> The bill shifts expenditures between the Law Enforcement Community Services Grant Program Cash Fund and the Forfeiture Defense Cash Fund in line with the revenue diversion in Table 1, but does not affect total cash fund expenditures on net. The fiscal note assumes the Law Enforcement Community Services Grant Program will continue and require General Fund to replace the lost cash fund revenue.

## **Summary of Legislation**

The bill clarifies various procedures regarding civil forfeiture, including:

- civil forfeiture must not be entered by the court unless the plaintiff establishes that the seized property is related to the defendant's crime;
- when possible, the same judge should preside over both the criminal case against the defendant and the civil case involving the defendant's property;
- civil forfeiture cases must be filed within 90 days of the property being seized;
- all procedures for the forfeiture action are stayed until 90 days after the criminal conviction is entered; and,
- during the 90-day period, courts may not enter a default judgement for failure to respond to a discovery request.

The bill allows a defendant whose property was seized to request a "post-seizure hearing" 14 days after the seizure. Courts must determine at this hearing if the seizure was invalid.

The bill adjusts the distribution of seized assets. Under current law, 25 percent of seized assets are credited to the Law Enforcement Community Services Grant Program Cash Fund in the Department of Local Affairs. The bill diverts this revenue to the newly created Forfeiture Defense Cash Fund in the Judicial Department. Proceeds to this newly created fund will be used to represent indigent clients in civil forfeiture cases.

The bill requires that property seized under state law must not be transferred to a federal agency unless the state law enforcement agency was participating in a joint task force with the federal government and the total value of the seized assets exceeds \$50,000.

## **Background and Assumptions**

According to the Department of Local Affairs's (DOLA) SMART Act report, there were a total of 236 civil forfeiture cases in calendar year 2021, the most recent year for which data are available.

The Law Enforcement Community Services Grant Program receives funding from civil forfeitures and uses this funding to make grant to law enforcement agencies, local government entities and community organizations for policing and outreach, drug intervention, prevention, treatment, and recovery. Because the bill diverts civil forfeiture revenue for other uses, the fiscal note assumes this grant program requires General Fund to continue operating at its current funding level.

The Department of Law currently has an agreement with the U.S. Drug Enforcement Agency (DEA) that allows for the sharing of forfeiture assets with participating agencies. Only one forfeiture asset payment was above \$50,000 in the past three calendar years. Omitting that payment, the Department of Law has received \$282,000 through this sharing arrangement from 2021 to 2023, or \$94,000 per year, credited to the Special Prosecution Custodial Fund.

**State Revenue**

The bill is expected to reduce revenue to the Special Prosecution Custodial Fund by an estimated approximately \$94,000 annually. This amount is based on the average annual forfeiture asset payments received by the Department of Law in cases with the U.S. DEA that were under \$50,000 in value, as discussed in the Background section. This revenue is not subject to TABOR.

**State Diversion**

The bill diverts an estimated \$277,425 per year from the Law Enforcement Community Services Grant Program Cash Fund to the newly created Forfeiture Defense Cash Fund beginning in FY 2024-25 and ongoing. This amount is based on the current appropriation to the grant program; actual revenue will vary in future years based on the amount of assets seized in forfeiture proceedings.

**State Expenditures**

The bill increases state General Fund expenditures in the Department of Local Affairs by \$277,425 in FY 2024-25 and ongoing, and decreases expenditures from the Law Enforcement Community Services Grant Program Cash Fund by the same amount on an ongoing basis. The bill also increases expenditures in the Judicial Department by \$277,425 from the Forfeiture Defense Cash Fund beginning in FY 2024-25. Costs are detailed in Table 2 and explained below.

**Table 2  
Expenditures Under HB 24-1023**

	<b>FY 2024-25</b>	<b>FY 2025-26</b>
<b>Department of Local Affairs</b>		
Law Enforcement Community Services Grant Program (CF)	(\$277,425)	(\$277,425)
Law Enforcement Community Services Grant Program (GF)	\$277,425	\$277,425
<b>DOLA Subtotal</b>	<b>\$0</b>	<b>\$0</b>
<b>Judicial Department</b>		
Forfeiture Defense Program (CF)	\$277,425	\$277,425
<b>Judicial Subtotal</b>	<b>\$277,425</b>	<b>\$277,425</b>
<b>Total</b>	<b>\$277,425</b>	<b>\$277,425</b>

**Department of Local Affairs.** Under the bill, funding for the Law Enforcement Community Services Grant Program is diverted to the newly created Forfeiture Defense Cash Fund. Because the bill does not repeal this grant program, and current law allows the fund to receive money appropriated by the General Assembly, the fiscal note assumes that the current activities of this grant program will continue and require a General Fund appropriation. The amounts shown in Table 2 are based on the current year FY 2023-24 appropriation. Funding for the grant program may be set at the discretion of the General Assembly.

**Judicial Department.** Starting in FY 2024-25, expenditures in the Judicial Department will increase by \$277,425 to provide attorneys to indigent defendants during forfeiture hearings. The department will have a minimal increase in workload in FY 2024-25 only to set up the new Forfeiture Defense Cash Fund. Additionally, there may be an increase in petitions for the trial courts to conduct the new post-seizure hearings. The volume of these additional petitions is expected to be minimal and absorbable within existing resources.

## Other Budget Impacts

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State Appropriations

For FY 2024-25, the bill requires the following appropriations:

- a General Fund appropriation of \$277,425 to the Department of Local Affairs; and
- a reduction in Law Enforcement Community Services Cash Fund appropriations of \$277,425 to the Department of Local Affairs.

An appropriation is not required to the Judicial Department from the Forfeiture Defense Cash Fund as the bill continuously appropriates money in the fund to the department.

## State and Local Government Contacts

Corrections  
Law

Judicial

Local Affairs

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).