

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6255
BILL NUMBER: SB 247

NOTE PREPARED: Dec 20, 2011
BILL AMENDED:

SUBJECT: Forfeiture.

FIRST AUTHOR: Sen. Bray
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Recovery of Law Enforcement Costs* – It specifies that law enforcement costs in a civil forfeiture include only those costs actually incurred in the investigation and prosecution of the specific offense, including expenses actually incurred in bringing the forfeiture action.
- B. *Filing and Reporting of Forfeiture Actions* – It requires every forfeiture action to be filed with a court, and requires a court to notify the Indiana Criminal Justice Institute of the amount and manner of a forfeiture distribution.
- C. *Retaining Attorney to File Forfeiture Actions* – It permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the Attorney General reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first \$10,000 of the amount of the proceeds or money obtained; (2) 25% of the part of the amount between \$10,000 and \$100,000; and (3) 20% of the part of the amount that is at least \$100,000; unless a court finds that the forfeiture action is unusually complex.
- D. *Prohibition of Contingency Fees in Forfeiture Actions* – It provides that a prosecuting attorney or deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee, and specifies that if an attorney receives a contingency fee, the contingency fee must be determined based on: (1) the value of the seized currency, if applicable; and (2) the amount realized from the sale of other property at auction.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Filing and Reporting of Forfeiture Actions* – The Criminal Justice Institute would be responsible for collecting information on the number of cases where asset forfeitures were filed in court.

Retaining Attorney to File Forfeiture Actions – The Office of the Attorney General reviews the compensation agreement between the prosecuting attorney and the retained attorney.

Explanation of State Revenues: Proceeds from the asset seizures are deposited into the Common School Fund. LSA found limited information on asset seizures to estimate whether the formula used to determine the attorney's share of forfeited assets would change the current amount that is deposited into the Common School Fund. As background, the State Auditor's data system reports that the Common School Fund received \$102,472 from controlled substance seizures in FY 2010 and \$61,272 in FY 2011. The amount retained by local law enforcement agencies was not known.

Explanation of Local Expenditures: *Filing and Reporting of Forfeiture Actions* – Courts are required by the bill to notify the Indiana Criminal Justice Institute of the amount and manner of a forfeiture distribution.

Explanation of Local Revenues: The amount that would be retained at the local level to compensate the law enforcement agencies and the county prosecuting attorneys would depend on whether staff in the prosecuting attorney's office files the civil forfeitures themselves. No information is available in published form about which counties file the civil actions in-house or rely on outside counsel.

State Agencies Affected:

Local Agencies Affected: Trial courts with criminal jurisdiction; prosecuting attorneys.

Information Sources: Auditor of the State.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.