

February 14, 2023

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2380 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2380 is respectfully submitted to your committee.

HB 2380 would make changes to the Kansas Standard Asset Seizure and Forfeiture Act. The bill would require a conviction before forfeiture of property would be allowed. The bill would remove some offenses that would have allowed forfeiture. A conviction of an offense giving rise to forfeiture would not be required when property is forfeited pursuant to a plea agreement or an agreement for immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution. The bill would describe certain property that would not be subject to forfeiture. The bill would reduce the number of days a seizing agency has to forward a written request for forfeiture to a county or district attorney from 45 to 14 days. The bill details that seized property would be returned to the person from whom property was seized within 30 days if a county or district attorney declines a request for forfeiture. HB 2380 would not allow a law enforcement agency to request federal adoption of a seizure.

The bill would allow a person whose property was seized to petition the court to determine if the forfeiture is unconstitutionally excessive and the property owner would be entitled to counsel during the proceedings. If the owner prevails by recovering at least half of the value of the property, the court would order the seizing agency or prosecuting attorney to pay reasonable attorney fees and other litigation costs and in certain instances interest. An owner of the property would have the right to appeal a district court order and could demand a jury trial and if the owner cannot employ counsel, the court would appoint an attorney from the panel for Indigents' Defense Services or in accordance with the system prescribed by the State Board of Indigents' Defense

Services. The bill would also raise the initial burden of proof for the plaintiff's attorney on behalf of the seizing agency from preponderance of the evidence to beyond a reasonable doubt. HB 2380 would not allow an owner to be assessed a storage fee or any other fee related to the property. If no determination of liability is made, the seized property would be returned to the owner within seven days and no fees would be assessed. Under the bill, a law enforcement agency could transfer the custody to a federal agency if the property was seized and forfeited pursuant to federal law.

The bill would require any cash or negotiable instruments forfeited under the Act to be deposited into the State General Fund. The bill would delete the current distribution of forfeiture funds, which includes state agencies and local governments involved in the forfeiture process.

The Board of Indigents' Defense Services states the forfeiture hearing could be a component of the associated underlying trial and not a separate hearing. Thus, the agency could have to litigate the contested forfeiture claims as part of the underlying criminal case or would have to contract with civil attorneys to assist with the litigation. The agency estimates that it would need to hire approximately 5.00 Attorney FTE positions at a cost of \$583,750 from the State General Fund for FY 2024. The estimate includes salary and benefits, training, and overhead expenses.

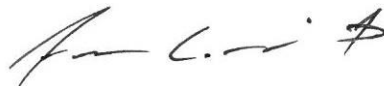
The Kansas Bureau of Investigation (KBI) states that the last five years the agency had 18 federal and nine state forfeitures totaling \$335,515. Currently, the KBI uses forfeiture revenues to lease a storage facility and maintain special use vehicles at a cost of approximately \$60,000 per year. These costs will be ongoing, and once the balance in the forfeiture funds is depleted the agency would request a State General Fund appropriation for this.

The Kansas Highway Patrol states that the average expenditures from the forfeiture monies have been \$437,240 and are used to support the mission of the Special Operations Units. Since FY 2015, the agency has received \$6.4 million in revenues from state forfeiture and expended \$3.4 million. Absent the ability to use funding from seizures, the agency would be forced to look for other sources of funding to supplement the reduction in revenues. Furthermore, the requirement that forfeiture could only happen after a conviction could lengthen the time the agency holds property waiting for a trial, conviction, and acquittal to occur. The requirement for a jury trial and proof beyond a reasonable doubt would require more investigations and expenditures of additional resources, time, and man hours leading to greater personnel costs; however, the agency is unable to accurately identify those additional costs at this time.

The Office of the Attorney General states that this bill would lead to an unknown amount of reduced revenue and increased costs to state agencies. The Judicial Branch indicates that bill could have a negligible fiscal effect on its operations that could be absorbed within existing resources. Any fiscal effect associated with HB 2380 is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities indicates that the bill could increase expenditures if cities are required to assist with the implementation and enforcement of bill. However, the League is unable to estimate an amount. The Kansas Association of Counties states that the bill could have a fiscal effect on county expenditures and revenues, but the fiscal effect cannot be estimated.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Paul Weisgerber, Kansas Bureau of Investigation
Sherry Macke, Highway Patrol
Wendi Stark, League of Kansas Municipalities
Jay Hall, Kansas Association of Counties
John Milburn, Office of the Attorney General
Vicki Jacobsen, Judiciary
Heather Cessna, Board of Indigents Defense Services
Randy Bowman, Department of Corrections
Scott Schultz, Sentencing Commission