

February 12, 2024

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 458 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 458 is respectfully submitted to your committee.

The bill would amend the Kansas Standard Asset Seizure and Forfeiture Act. The bill would specify that certain drug offenses would not give rise to forfeiture. The bill would require courts to determine if the proposed forfeiture is unconstitutionally excessive. Under current law, when property is seized for forfeiture, the seizing agency has 45 days after the seizure to turn it over to the county or district attorney where the seizure occurred. The bill would reduce the number of days from 45 to 14. If the county or district attorney declines to take possession, the state law enforcement agency that seized the property would be required to engage an attorney to represent the agency, and if an attorney has not been engaged, the property would be returned within 30 days to the owner. County and district attorneys would also have to engage an assistant attorney general within 14 days or the property would be returned within 30 days to the owner. These actions would not affect the time limitations for initiating or filing a forfeiture proceeding.

SB 458 would require probable cause affidavit filing and review to commence forfeiture proceedings. The bill would also increase the burden of proof required to forfeit property to include clear and convincing evidence. Persons involved in forfeiture proceedings could demand a jury trial. When a court orders at least half of the value of the seized property to be returned, then the bill would authorize courts to order the seizing agency to pay attorney fees and other litigation costs incurred by claimant. The bill would forbid state agencies to request federal adoption of state seizures. The bill would allow federal forfeiture if the property was seized under federal law. The bill would require the Kansas Bureau of Investigation to submit a forfeiture fund financial report to certain legislative committees and members.

The Kansas Bureau of Investigation states that the right to request a jury trial as well as prohibiting the request to have the federal government adopt state seizures, could increase time spent on each case and increase expenditures to store seized assets. Depending on the number and size of each forfeiture, the agency could need to lease storage space to keep personal property and potentially hire additional positions to manage and care for the property. However, the agency cannot estimate the fiscal effect the bill would have on agency expenditures.

The Kansas Highway Patrol (KHP), states that prohibiting federal forfeiture would increase both staff time and resources to litigate at the state level. The Department of Justice currently carries the cost of administrative processing, storage, equitable sharing, and litigation. Because the bill would require forfeiture to be the state's responsibility, the KHP would have to hire outside litigators or hire additional in-house counsel. If the agency hired new attorney positions it would cost \$126,190 for each position from agency fee funds. The agency cannot estimate the cost for storing seized assets.

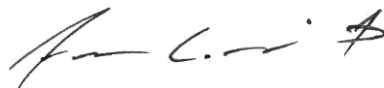
The Kansas Highway Patrol states that the average expenditures from the forfeiture monies have been \$1.5 million over the last five years and are used to support the mission of the Special Operations Units. Since FY 2019, the agency has received \$6.0 million in revenues from state forfeiture and expended \$7.7 million. In addition, the agency receives \$100,000 to reimburse its Special Operations Units for overtime, fuel, training, and travel from the Department of Justice (DOJ), which could also be lost. Absent the ability to use funding from seizures and the loss of reimbursement from the DOJ, the agency would be forced to look for other sources of funding to supplement the reduction in revenues to combat illegal activities.

According to the Office of Judicial Administration, the bill could require district court judges to address petitions received, conduct hearings, consider additional factors during hearings, and make findings. However, the agency cannot estimate the fiscal effect those activities would have on agency expenditures.

The Department of Wildlife and Parks state that the bill would not have a fiscal effect upon its operating expenditures. Any fiscal effect associated with SB 458 is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties states that the bill could have a fiscal effect on counties depending on if and how often the asset forfeiture process is used. However, the Association cannot estimate a precise fiscal effect. The League of Kansas Municipalities indicates that the bill could increase expenditures if cities are required to assist with the implementation and enforcement of the bill. However, the League is unable to estimate the increase in expenditures.

Sincerely,



Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Paul Weisgerber, Kansas Bureau of Investigation
Sherry Macke, Kansas Highway Patrol
Wendi Stark, League of Kansas Municipalities
Jay Hall, Kansas Association of Counties
Terry Bruce, Department of Wildlife & Parks