

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2005
STATE OF HAWAII

S.B. NO. 1313
S.D. 1

A BILL FOR AN ACT

RELATING TO FORFEITURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that for at least the
2 last two years, Hawaii's law enforcement agencies have generated
3 approximately \$1,000,000 per year through the forfeiture of
4 property under chapter 712A, Hawaii Revised Statutes. While
5 these funds have been used productively by law enforcement for
6 training and other purposes, it also appears, as the
7 participants in the 2003 Ice Summit recommended, that funding
8 for drug treatment, along with prevention, should be the State's
9 highest priorities in dealing with the problems of abuse of ice
10 and other drugs.

11 Drug abuse treatment, tailored to the needs of individual
12 drug abusers, can be highly cost-effective and is likely to be
13 one of the most efficient ways to prevent drug crimes and reduce
14 recidivism and the revolving door when convicted felons return
15 to society. For these reasons, this Act dedicates a portion of
16 the net proceeds generated by forfeiture to the support of drug
17 treatment programs, especially those serving first-time
18 offenders.

2006-1218 SB1313 SD1 SMA.doc



PROPOSED

S.B. NO. 1313
S.D. 1

1 SECTION 2. Section 712A-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§712A-16 Disposition of property forfeited.** (1) All
4 property and moneys forfeited to the State under this chapter
5 and, to the extent permitted by federal law, all property and
6 moneys transferred to a state or local law enforcement agency by
7 the federal government as a result of civil or criminal asset
8 forfeiture under federal law, shall be transferred to the
9 attorney general who:

10 (a) May transfer property [~~, other than currency, which~~
11 ~~shall be distributed~~] and moneys in accordance with
12 subsection (2) to any local or state government
13 entity, municipality, or law enforcement agency within
14 the State;

15 (b) May sell forfeited property to the public by public
16 sale; provided that for leasehold real property:

17 (i) The attorney general shall first offer the holder
18 of the immediate reversionary interest the right
19 to acquire the leasehold interest and any
20 improvements built or paid for by the lessee for
21 the then fair market value of the leasehold
22 interest and improvements. The holder of the



PROPOSED

S.B. NO. 1313
S.D. 1

1 immediate reversionary interest shall have thirty
2 days after receiving written notice within which
3 to accept or reject the offer in writing;
4 provided that the offer shall be deemed to be
5 rejected if the holder of the immediate
6 reversionary interest has not communicated
7 acceptance to the attorney general within the
8 thirty-day period. The holder of the immediate
9 reversionary interest shall have thirty days
10 after acceptance to tender to the attorney
11 general the purchase price for the leasehold
12 interest and any improvements, upon which tender
13 the leasehold interest and improvements shall be
14 conveyed to the holder of the immediate
15 reversionary interest.

16 (ii) If the holder of the immediate reversionary
17 interest fails to exercise the right of first
18 refusal provided in subparagraph (i), the
19 attorney general may proceed to sell the
20 leasehold interest and any improvements by public
21 sale.



- 1 (iii) Any dispute between the attorney general and the
2 holder of the immediate reversionary interest as
3 to the fair market value of the leasehold
4 interest and improvements shall be settled by
5 arbitration pursuant to chapter 658A;
- 6 (c) May sell or destroy all raw materials, products, and
7 equipment of any kind used or intended for use in
8 manufacturing, compounding, or processing a controlled
9 substance or any untaxed cigarettes in violation of
10 chapter 245;
- 11 (d) May compromise and pay valid claims against property
12 forfeited pursuant to this chapter; [~~or~~]
- 13 (e) May make any other disposition of forfeited property
14 authorized by law[~~or~~]; or
- 15 (f) Shall, before distributing unsold forfeited property
16 other than currency pursuant to subsection (2), have
17 all forfeited property appraised for the purposes of
18 distribution under subsection (2).
- 19 (2) All forfeited money, property, and the sale proceeds
20 thereof, up to a maximum of three million dollars per year, [~~not~~
21 ~~previously transferred pursuant to [subsection] (1) (a) of this~~

10-20-2006

1 section,] shall, after payment of expenses of administration and
2 sale, be distributed as follows:

3 (a) One quarter shall be distributed pro rata to the unit
4 or units of state or local government [†]whose[†]
5 officers or employees conducted the investigation and
6 caused the arrest of the person whose property was
7 forfeited or seizure of the property for forfeiture;

8 (b) One quarter shall be distributed pro rata to the
9 prosecuting attorney who instituted the action
10 producing the forfeiture; and

11 (c) One half shall be deposited into the criminal
12 forfeiture fund established by this chapter.

13 (3) All forfeited property and the sale proceeds thereof
14 in excess of \$3,000,000 per year shall be distributed to the
15 general fund and shall be held available for drug abuse
16 treatment.

17 [~~3~~] (4) Property and money distributed to units of state
18 and local government pursuant to subsections (2)(a), (2)(b),
19 (5)(a), and (5)(c) shall be used for law enforcement purposes,
20 and shall complement but not supplant the funds regularly
21 appropriated for such purposes.



PROPERTY

1 ~~[(4)]~~ (5) There is established in the department of the
2 attorney general a revolving fund to be known as the criminal
3 forfeiture fund, hereinafter referred to as the "fund" in which
4 shall be deposited one-half of the proceeds of a forfeiture and
5 any penalties paid pursuant to section 712A-10(6). All moneys
6 in the fund shall be expended by the attorney general and are
7 hereby appropriated for the following purposes:

8 (a) The payment of any expenses necessary to seize,
9 detain, appraise, inventory, safeguard, maintain,
10 advertise, or sell property seized, detained, or
11 forfeited pursuant to this chapter or of any other
12 necessary expenses incident to the seizure, detention,
13 or forfeiture of such property and such contract
14 services; ~~[and]~~ payments to reimburse any federal,
15 state, or county agency for any expenditures made to
16 perform the foregoing functions;

17 (b) After deduction of expenses paid under paragraph (a),
18 the remaining proceeds of forfeiture deposited into
19 the fund in any given fiscal year shall be expended
20 the following year for:

21 (i) Drug treatment programs for first-time drug
22 offenders required to complete a drug treatment

PROPOSAL

S.B. NO.

1313
S.D. 1

- 1 program pursuant to section 706-622.5 as a
- 2 condition of probation;
- 3 (ii) Drug treatment programs provided within a
- 4 correctional facility; and
- 5 (iii) Drug treatment programs provided outside a
- 6 correctional facility for persons who are on
- 7 probation or parole but do not qualify for
- 8 programs pursuant to section 706-622.5.

9 Priority shall be given to programs conducted pursuant
 10 to section 706-622.5; and

11 (c) Funds remaining in the fund after payments made
 12 pursuant to paragraphs (a) and (b) shall be awarded
 13 for the following purposes:

14 ~~(b)~~ (i) The payment of awards for information or
 15 assistance leading to a civil or criminal proceeding;

16 ~~(e)~~ (ii) The payment of supplemental sums to state
 17 and county agencies for law enforcement purposes;

18 ~~(d)~~ (iii) The payment of expenses arising in
 19 connection with programs for training and education of
 20 law enforcement officers; and

21 ~~(e)~~ (iv) The payment of expenses arising in
 22 connection with enforcement pursuant to the drug

PROPOSED

S.B. NO. 1313
S.D. 1

1 nuisance abatement unit in the department of the
2 attorney general.

3 [~~(5)~~] (6) The attorney general [~~may~~], without regard to
4 the requirements of chapter 91, [~~promulgate~~] may adopt rules
5 [~~and regulations~~] concerning the disposition of property, the
6 use of the fund, and compromising and paying valid claims
7 against property forfeited pursuant to this chapter.

8 [~~(6)~~] (7) Not less than twenty days prior to the convening
9 of each regular session, the attorney general shall provide to
10 the legislature a report on the use of the Hawaii omnibus
11 criminal forfeiture act during the fiscal year preceding the
12 legislative session. The report shall include:

- 13 (a) The total amount and type of property seized by law
14 enforcement agencies;
- 15 (b) The total number of administrative and judicial
16 actions filed by prosecuting attorneys and the
17 disposition thereof;
- 18 (c) The total number of claims or petitions for remission
19 or mitigation filed in administrative actions and the
20 dispositions thereof;
- 21 (d) The total amount and type of property forfeited and
22 the sale proceeds thereof;

- 1 (e) The total amount and type of property distributed to
- 2 units of state and local government;
- 3 (f) The amount of money deposited into the criminal
- 4 forfeiture fund; and
- 5 (g) The amount of money expended by the attorney general
- 6 from the criminal forfeiture fund [~~under subsection~~
- 7 ~~(5)~~] and the reason for the expenditures."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2050.

PROPOSED

Report Title:

Forfeitures

Description:

Requires moneys from the criminal forfeiture revolving fund to be used for drug treatment programs. (SD1)

