

BILL TEXT:

STATE OF NEW YORK

4087

2005-2006 Regular Sessions

IN ASSEMBLY

February 8, 2005

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, the county law and the general municipal law, in relation to greater accountability for seized assets

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The opening paragraph of subdivision 2 of section 1349 of
2 the civil practice law and rules, as added by chapter 655 of the laws of
3 1990, is amended to read as follows:

4 If any other provision of law expressly governs the manner of disposi-
5 tion of property subject to the judgment or order of forfeiture, that
6 provision of law shall be controlling. Upon application by a claiming
7 agent for reimbursement of moneys directly expended by a claiming agent
8 in the underlying criminal investigation for the purchase of contraband
9 which were converted into a non-monetary form or which have not been
10 otherwise recovered, the court shall direct such reimbursement from
11 money forfeited pursuant to this article. Upon application of the claim-
12 ing agent, the court may direct that any vehicles, vessels or aircraft
13 forfeited pursuant to this article be retained by the claiming agent for
14 law enforcement purposes, unless the court determines that such property
15 is subject to a perfected lien, in which case the court may not direct
16 that the property be retained unless all such liens on the property to
17 be retained have been satisfied or pursuant to the court's order will be
18 satisfied. In the absence of an application by the claiming agent, the
19 claiming authority may apply to the court to retain such property for
20 law enforcement purposes. Upon such application, the court may direct
21 that such property be retained by the claiming authority for law
22 enforcement purposes, unless the court determines that such property is
23 subject to a perfected lien. If not so retained, the judgment or order
24 shall direct the claiming authority to sell the property in accordance

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 with article fifty-one of this chapter, and that the proceeds of such
2 sale and any other moneys realized as a consequence of any forfeiture
3 pursuant to this article shall be deposited to an asset forfeiture fund
4 established pursuant to section six-s of the general municipal law and
5 shall be apportioned and paid in the following descending order of
6 priority:

7 § 2. Section 1349 of the civil practice law and rules is amended by
8 adding a new subdivision 5 to read as follows:

9 5. Proceeds from the sale of property and other moneys realized as a
10 consequence of any forfeiture distributed to the claiming agent or
11 claiming authority of any county, town, city, or village of which the
12 claiming agent or claiming authority is a part, shall be deposited to an
13 asset forfeiture fund established pursuant to section six-s of the
14 general municipal law.

15 § 3. Subdivision 2 of section 700 of the county law is amended to read
16 as follows:

17 2. Within thirty days after the receipt of any fine, penalty, recovery
18 upon any recognizance, proceeds from the sale of property and other
19 moneys realized as a consequence of any forfeiture, or other money
20 belonging to the county, the district attorney shall pay the same to the
21 county treasurer. Not later than the first day of February in each year,
22 the district attorney shall make in duplicate a verified true statement
23 of all such moneys received and paid to the county treasurer during the
24 preceding calendar year and at that time shall pay to the county treas-
25 urer any balance due. One statement shall be furnished to the county
26 treasurer and the other to the clerk of the board of supervisors. A
27 district attorney who is not re-elected shall make and file the verified
28 statement and pay any balance of such moneys to the county treasurer
29 within thirty days after the expiration of his term.

30 § 4. The general municipal law is amended by adding a new section 6-s
31 to read as follows:

32 § 6-s. Asset forfeiture fund. 1. As used in this section:

33 a. The term "governing board", insofar as it is used in reference to a
34 village, shall mean the board of trustees thereof; insofar as it is used
35 in reference to a town, shall mean the town board thereof; insofar as it
36 is used in reference to a county, shall mean the board of supervisors
37 thereof; insofar as it is used in reference to a city, shall mean the
38 "legislative body" thereof, as that term is defined in subdivision seven
39 of section two of the municipal home rule law.

40 b. The term "chief fiscal officer" shall mean:

41 (i) In the case of counties operating under (1) an alternative form of
42 county government or charter enacted as a state statute or adopted under
43 the alternative county government law or by local law, the official
44 designated in such statute, consolidated law or local law as the chief
45 fiscal officer, or, if no such designation is made therein, the official
46 possessing powers and duties similar to those of a county treasurer
47 under the county law as shall be designated by local law.

48 (2) In the case of counties not operating under an alternative form of
49 county government or charter enacted as a state statute or adopted under
50 the alternative county government law or by local law, the treasurer,
51 except that, in the case of counties having a comptroller, it shall mean
52 the comptroller.

53 (ii) In the case of cities, the comptroller; if a city does not have a
54 comptroller, the treasurer; if a city has neither a comptroller nor a
55 treasurer, such official possessing powers and duties similar to those
56 of a city treasurer as the finance board shall, by resolution, desig-

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1 nate. A certified copy of such designation shall be filed with the state
2 comptroller and shall be a public record.

3 (iii) In the case of towns, the town supervisor; if a town has more
4 than one supervisor, the presiding supervisor.

5 (iv) In the case of villages, the village treasurer.

6 c. The term "claiming authority" shall mean the district attorney
7 having jurisdiction over the offense or the attorney general for purpose
8 of those crimes for which the attorney general has criminal jurisdiction
9 in a case where the underlying criminal charge has been, is being or is
10 about to be brought by the attorney general, or the appropriate corpo-
11 ration counsel or county attorney, provided that the corporation counsel
12 or county attorney may act as a claiming authority only with the consent
13 of the district attorney or the attorney general, as appropriate.

14 d. The term "claiming agent" shall mean and shall include all persons
15 described in subdivision thirty-four of section 1.20 of the criminal
16 procedure law, and sheriffs, undersheriffs and deputy sheriffs of coun-
17 ties within the city of New York.

18 2. The governing board shall authorize the establishment of an asset
19 forfeiture fund for any claiming agent or claiming authority as is
20 deemed necessary for the proceeds of sale of property and other moneys
21 realized as a consequence of any forfeiture. The separate identity of
22 such fund shall be maintained.

23 3. There shall be paid into the asset forfeiture fund all proceeds
24 realized as a consequence of any forfeiture action.

25 4. The moneys in the asset forfeiture fund shall be deposited and
26 secured in the manner provided by section ten of this article. The
27 moneys in such fund so deposited shall be kept in a separate bank
28 account. The chief fiscal officer may invest the moneys in such fund in
29 the manner provided in section eleven of this article. Any interest
30 earned or capital gains realized on the moneys so deposited or invested
31 shall accrue to and become part of each such fund. The separate identity
32 of such fund shall be maintained, whether its assets consist of cash,
33 investments, or both.

34 5. Every claim for the payment of money from the asset forfeiture fund
35 must be accompanied by a written certification that the expenditure is
36 in compliance with purposes allowed by law. Payments from such fund
37 shall be made by the chief fiscal officer subject to the required
38 certification and the determination of fund sufficiency.

39 6. The chief fiscal officer, at the termination of each fiscal year,
40 shall render a detailed report of the operation and condition of the
41 asset forfeiture fund to the governing board. Such report shall be
42 subject to examination and audit. The chief fiscal officer may account
43 for such fund separate and apart from all other funds of the village,
44 town, county, or city.

45 § 5. This act shall take effect on the one hundred eightieth day after
46 it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A4087

SPONSOR: Pretlow

TITLE OF BILL: An act to amend the civil practice law and rules, the county law and the general municipal law, in relation to greater

accountability for seized assets

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is to ensure that asset forfeiture funds are used for purposes as required by law, and to eliminate the possibility of misuse of funds.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 amends subdivision 2 of section 1349 of the Civil Practice Law and Rules to direct moneys received from asset forfeiture to be deposited into an asset forfeiture fund. Section 2 adds a new subdivision 5 of section 1349 of the Civil Practice Law and Rules to direct the proceeds of forfeiture distributed to a law enforcement official of any village, county, town, or city to be deposited into an asset forfeiture fund. Section 3 amends subdivision 2 of section 700 of County Law to require the county district attorney to pay to the county treasurer moneys realized as a consequence of forfeiture actions. Section 4 adds a new section 6-o to the General Municipal Law to create a new asset forfeiture fund and establishes internal controls in relation to managing the fund. Section 5 provides for an effective date 180 days after enactment.

JUSTIFICATION:

This bill establishes internal controls over funds received by law enforcement officials and agencies through asset forfeiture to ensure that the monies are used for purposes as required by law. This is accomplished by imposing oversight and reporting controls similar to other moneys belonging to a local government. The bill ensures internal controls by establishing an asset forfeiture fund as a depository of forfeiture proceeds and by designating the governing board and chief fiscal officer of a locality as custodians of asset forfeiture funds.

PRIOR LEGISLATIVE HISTORY:

Was introduced as Assembly bill 1582 in 1995
Introduced as Assembly 1738 in 1997
Introduced as Assembly 5140 in 1999

FISCAL IMPLICATIONS:

None

EFFECTIVE DATE:

180 days after enactment
