

REVENUE: No revenue impact  
FISCAL: Fiscal statement issued

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Action: Do Pass  
Vote: 9 - 0 - 1  
Yeas: Barton, Cameron, Krieger, Olson, Shields, Smith J., Stiegler, Whisnant, Barker  
Nays: 0  
Exc.: Garrett  
Prepared By: Bill Taylor, Counsel  
Meeting Dates: 4/7

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**WHAT THE MEASURE DOES:** Clarifies Oregon’s forfeiture laws and incorporates changes in these laws to reflect enactment of Ballot Measure 53. Re-enacts Oregon’s forfeiture laws. Redefines “forfeiture proceeds.”

- ISSUES DISCUSSED:**
- Need to re-codify
  - Ballot Measure 53

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** In 2000 Oregon voters approved Ballot Measure 3, an amendment to the Oregon Constitution, and in doing so drastically changed Oregon’s asset forfeiture laws. Prior to Ballot Measure 3, all asset forfeiture was civil - meaning that a seizing agency had to have probable cause or a substantial objective basis to believe that property was related to prohibited conduct. A claimant seeking to avoid forfeiture had to show by a preponderance of the evidence that the property was not related to prohibited conduct.

Ballot Measure 3 required that the owner of the property subject to forfeiture be convicted of a crime and that the property either be instrumental in committing or facilitating that crime, or be proceeds of the crime. The burden of proof was placed on the forfeiting agency and elevated to that of “clear and convincing” evidence. The forfeiture revenue was prohibited from being spent for law enforcement purposes, and required that funds were to be used for drug treatment absent another law or ordinance. The state had the burden of proof to show that the property was subject to forfeiture, and the burden of proof was “beyond a reasonable doubt.”

Ballot Measure 3 was challenged on the grounds that it contained more than one amendment to the Oregon Constitution in violation of Article IV, section 1(2)(d) of the very same Constitution. The Court of Appeals found Ballot Measure 3 unconstitutional. *Lincoln Interagency Narcotics Team v. Kitzhaber* 188 Or. App. 526 (2003). Three years later, the Oregon Supreme Court overturned the Court of Appeals decision and found Ballot Measure 3 constitutional. *Lincoln Interagency Narcotics Team v. Kitzhaber* 341 Or. 496 (2006).

Ballot Measure 3 was codified into statute by House Bills 2429 and 3642 in the 2001 legislative session. HB 3642 had a sunset provision and expired on July 31, 2005. HB 3457 of the 2005 legislative session re-enacted the criminal forfeiture statutes and removed the sunset provision of HB 3642. HB 3457 was statutory law, not a constitutional provision. It was intended to address the need for a forfeiture law in Oregon because Ballot Measure 3 was, at the time, on hold after the Court of Appeals decision pending the last word by the Oregon Supreme Court.

The 2007 legislative session referred SJR 18 to the voters who approved the ballot measure, Ballot Measure 53, in May 2008. It amended Section 10, Article XV of the Constitution of the State of Oregon, by clarifying that the property forfeited: (1) Constitutes the proceeds of the crime for which the claimant has been convicted; (2) Was instrumental in

committing or facilitating the crime for which the claimant has been convicted; (3) Constitutes proceeds of one or more other crimes similar to the crime for which the claimant was convicted; and (4) Was instrumental in committing or facilitating one or more other crimes similar to the crime for which the claimant was convicted.

SJR 18 allows forfeiture without conviction of claimant if the forfeiting agency proves the property constitutes proceeds or instrumentality of crime committed by another person and: (a) The claimant took the property with the intent to defeat forfeiture of the property; (b) The claimant knew or should have known that the property constituted proceeds or instrumentality of criminal conduct; or (c) The claimant acquiesced in the criminal conduct in that the person knew of the criminal conduct and failed to take reasonable action to terminate the criminal conduct. It sets the standard of proof for civil forfeiture as the preponderance of the evidence if the property subject to forfeiture is personal property, and clear and convincing evidence if the property is real property. It places the burden of proof on the person claiming cash, weapons or negotiable instruments if these items were found in close proximity to controlled substances or instrumentalities of criminal conduct.

SJR 18 allows state and local law enforcement to obtain shared proceeds from the United States Department of Justice resulting from the state or local law enforcement's participation in a federal forfeiture. It requires that, when the property being forfeited in a criminal forfeiture constitutes proceeds of one or more other similar crimes, the claimant be notified in writing of those similar crimes and has an opportunity to challenge the seizure. It allows forfeiture without criminal conviction when the property is an abused or neglected animal.

Forfeiture has a long and complicated history in Oregon. Among other things, SB 356A re-enacts Oregon's civil forfeiture laws. It does so in order to ensure that any parts of it that were in constitutional limbo after the Court of Appeals decision on Ballot Measure 3 are not challenged on the grounds that a law once found unconstitutional does not automatically become constitutional by a later court ruling, but requires legislative action.