

**HF4571 - 1UE - Forfeited Property Modifications; Audit**

Chief Author: **John Lesch**  
 Committee: **Judiciary Finance & Civil Law Division**  
 Date Completed: **5/4/2020 12:04:18 PM**  
 Lead Agency: **Public Safety Dept**  
 Other Agencies:  
     Office of The State Auditor

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
<b>Office of The State Auditor</b>						
General Fund	-	-	61	209	209	
<b>Public Safety Dept</b>						
General Fund	-	-	24	-	-	
Trunk Highway	-	-	41	82	82	
<b>State Total</b>						
General Fund	-	-	85	209	209	
Trunk Highway	-	-	41	82	82	
<b>Total</b>	-	-	<b>126</b>	<b>291</b>	<b>291</b>	
<b>Biennial Total</b>			<b>126</b>		<b>582</b>	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
<b>Office of The State Auditor</b>					
General Fund	-	-	.8	1.3	1.3
<b>Public Safety Dept</b>					
General Fund	-	-	1	1	1
Trunk Highway	-	-	-	-	-
<b>Total</b>	-	-	<b>1.8</b>	<b>2.3</b>	<b>2.3</b>

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Adam Blom      **Date:** 5/4/2020 12:04:18 PM  
**Phone:** 651-284-6542      **Email:** adam.blom@lbo.leg.mn

**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
<b>Dollars in Thousands</b>		<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
<b>Office of The State Auditor</b>						
General Fund		-	-	61	209	209
<b>Public Safety Dept</b>						
General Fund		-	-	24	-	-
Trunk Highway		-	-	41	82	82
<b>Total</b>		<b>-</b>	<b>-</b>	<b>126</b>	<b>291</b>	<b>291</b>
<b>Biennial Total</b>				<b>126</b>		<b>582</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Office of The State Auditor</b>						
<b>General Fund</b>						
Expenditures		-	-	96	216	216
Absorbed Costs		-	-	(35)	(7)	(7)
<b>Public Safety Dept</b>						
<b>General Fund</b>						
General Fund		-	-	24	-	-
Trunk Highway		-	-	41	82	82
<b>Total</b>		<b>-</b>	<b>-</b>	<b>126</b>	<b>291</b>	<b>291</b>
<b>Biennial Total</b>				<b>126</b>		<b>582</b>
<b>2 - Revenues, Transfers In*</b>						
<b>Office of The State Auditor</b>						
<b>General Fund</b>						
General Fund		-	-	-	-	-
<b>Public Safety Dept</b>						
<b>General Fund</b>						
General Fund		-	-	-	-	-
Trunk Highway		-	-	-	-	-
<b>Total</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>				<b>-</b>		<b>-</b>

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Chief Author: **John Lesch**  
 Committee: **Judiciary Finance & Civil Law Division**  
 Date Completed: **5/4/2020 12:04:18 PM**  
 Agency: **Public Safety Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
<b>Local Fiscal Impact</b>		
	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	-	24	-	-	-
Trunk Highway	-	-	41	82	82	82
<b>Total</b>	-	-	<b>65</b>	<b>82</b>	<b>82</b>	<b>82</b>
<b>Biennial Total</b>			<b>65</b>			<b>164</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	-	1	1	1
Trunk Highway	-	-	-	-	-
<b>Total</b>	-	-	<b>1</b>	<b>1</b>	<b>1</b>

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Adam Blom      **Date:** 5/4/2020 9:46:49 AM  
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**State Cost (Savings) Calculation Details**

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\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
General Fund	-	-	24	-	-	
Trunk Highway	-	-	41	82	82	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>65</b>	<b>82</b>	<b>82</b>	
<b>Biennial Total</b>			<b>65</b>			<b>164</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	-	24	-	-	
Trunk Highway	-	-	41	82	82	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>65</b>	<b>82</b>	<b>82</b>	
<b>Biennial Total</b>			<b>65</b>			<b>164</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	
Trunk Highway	-	-	-	-	-	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Biennial Total</b>			<b>-</b>			<b>-</b>

**Bill Description**

Section 1 adds definitions. Section 2 removes failure to appear as a basis for forfeiting a motor vehicle. Section 3 provides that an “Innocent owner” of a motor vehicle can bring a claim by notifying prosecutor within 60 days of notice of seizure. The prosecutor has to respond in 30 days with complaint; the hearing on the petition needs to occur within 30 days of filing of the petition. An “asserting person” gets the motor vehicle back if they prove by a preponderance of the evidence that they have an actual ownership interest in the motor vehicle and did not have actual or constructive knowledge of its unlawful use or took reasonable steps to prevent its unlawful use.

Section 4 changes some of the notice language for forfeiture. If the motor vehicle has a value of \$15,000 or less, the claimant can take the return process to conciliation court. Section 5 says a law enforcement agency continues to get 70% of the proceeds but can use the funds for more things.

Section 6 says the forfeiture is stayed and the motor vehicle returned if the driver committed an offense other than 1<sup>st</sup> degree DUI or the driver is accepted into treatment court. The stay ends and the motor vehicle can be seized if the driver operates a motor vehicle without the required ignition interlock device or leaves treatment court. Section 7 gives law enforcement immunity if it returns a vehicle that is subsequently used unlawfully.

Section 8 begins the controlled substance forfeiture provisions. Section 9 is new and says a law enforcement agency cannot transfer property to a federal agency if the transfer would “circumvent state law.”

Section 10 says that all property but a homestead is subject to forfeiture for a controlled substance offense. There is language authorizing a law enforcement agency to “money” (defined term) if the law enforcement agency gives it to someone to make a purchase and the law enforcement agency records the serial number or otherwise marks the money for identification. Section 11 imposes restrictions on the forfeiture of a “conveyance device” including increasing the dollar value of the device to \$100 and that the controlled substance must be intended for distribution or sale. New language requires the “money” to have a value of more than \$1,500.

Section 12 removes a reference to real and personal property that appears to be duplicative of what is in section 10.

Section 13 says all money totaling \$1,500 or more can be administratively forfeited if there is probable cause to believe it represents the proceeds of a controlled substance offense. There is a presumption that when money is found “in proximity” to a controlled substance, it was exchanged for the purchase of a controlled substance. The requirement about a law enforcement agency keeping the money if it is marked for identification appears again.

Section 14 creates the concept of an “innocent owner” of a motor vehicle seized as part of a controlled substance offense who can notify the prosecutor within 60 days of the seizure of their status. The same process to forfeit a motor vehicle based on a driving while under the influence offense is then added. Section 15 covers property that does not exceed \$50,000 in value.

Section 16 maintains the division of the proceeds between the law enforcement agency and prosecutor and adds uses for the forfeited proceeds. Section 17 covers forfeiture related to trafficked persons. A Department of Public Safety reporting requirement is removed.

Section 18 adds federal forfeitures to a reporting requirement and adds several data elements that must be collected as reported. A new type of record about forfeitures is required. Law enforcement agencies will also have to provide data to the state auditor’s office for publication on that office’s website. The state auditor can conduct an audit.

With the addition of the A-1 Amendment, effective dates are changed to January 1, 2021 and cryptocurrency is permitted to be collected.

### **Assumptions**

#### BCA

The Bureau of Criminal Apprehension (BCA) is a law enforcement agency subject to the forfeiture provisions.

The BCA operates software called eCharging that generates a forfeiture notice and property receipt for forfeitures associated with driving under the influence/driving while intoxicated offenses.

The eCharging software will need to be changed to reflect the changes made by the proposed legislation.

The technical effort will take 240 hours for analysis, development and testing at approximately \$100 per hour.

The BCA’s Investigations Division seizes property under provisions included in the proposed legislation. For purposes of the change in section 11, the BCA had no seizures of \$1,500 or less during the last four (4) fiscal years.

The BCA Investigations Division will need to collect and store more data to be included in the quarterly reports.

The BCA further assumes that the need for the cost analysis, development, and testing will still need to occur in fiscal year 2021, regardless of the changed effective dates.

Given that there has been no historical collection of cryptocurrency at the state level, the BCA cannot know how much cryptocurrency would be collected in the future.

#### MSP

The State Patrol does not have the staffing needed to meet the tracking and reporting requirements set forth in the bill. One new FTE will be needed to fulfill the requirements should the bill become law. The appropriate FTE job classification for this position would be Office & Admin Specialist Intermediate.

### **Expenditure and/or Revenue Formula**

#### BCA

The cost for analysis, development and testing is 240 hours at approximately \$100 per hour for a total of \$24,000.

The BCA will not lose forfeiture proceeds due to the change in section 11.

The cost of the additional data collection and reporting will be absorbed by the BCA.

MSP

Hourly salary/top of range OASI: \$23.41

Fringe calculated at 69.01% which will be the rate for 2021: \$16.15

Total hourly rate salary and fringe: \$39.56

Annual salary and fringe for 1 FTE: \$82,284.80

### **Long-Term Fiscal Considerations**

### **Local Fiscal Impact**

Local units of government are included in the forfeiture process and how the proceeds can be used. Local units of government will need to explain the impacts of the changes on their operations.

### **References/Sources**

**Agency Contact:** Olivia Anderson (651-793-2713)

**Agency Fiscal Note Coordinator Signature:** Larry Freund

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**HF4571 - 1UE - Forfeited Property Modifications; Audit**

Chief Author: **John Lesch**  
 Committee: **Judiciary Finance & Civil Law Division**  
 Date Completed: **5/4/2020 12:04:18 PM**  
 Agency: **Office of The State Auditor**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	-	61	209	209	
<b>Total</b>	-	-	<b>61</b>	<b>209</b>	<b>209</b>	
<b>Biennial Total</b>			<b>61</b>		<b>418</b>	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	-	.8	1.3	1.3
<b>Total</b>	-	-	<b>.8</b>	<b>1.3</b>	<b>1.3</b>

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Michelle Weber    **Date:** 5/4/2020 9:46:43 AM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
General Fund	-	-	61	209	209	
<b>Total</b>	-	-	<b>61</b>	<b>209</b>	<b>209</b>	
<b>Biennial Total</b>			<b>61</b>		<b>418</b>	
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund						
Expenditures	-	-	96	216	216	
Absorbed Costs	-	-	(35)	(7)	(7)	
<b>Total</b>	-	-	<b>61</b>	<b>209</b>	<b>209</b>	
<b>Biennial Total</b>			<b>61</b>		<b>418</b>	
<b>2 - Revenues, Transfers In*</b>						
General Fund						
<b>Total</b>	-	-	-	-	-	
<b>Biennial Total</b>			-		-	

**Bill Description**

HF4571-1UE requires law enforcement agencies to report additional information about forfeiture incidents to the State Auditor including collecting information about forfeitures pursued under federal law. HF4571-1UE changes the frequency of reporting from monthly to quarterly. In addition, the bill requires law enforcement agencies and prosecuting authorities to report to the State Auditor proceeds of forfeited property under state and federal law each year along with the use of such funds.

Finally, HF4571-1UE allows the state auditor to perform financial audits of law enforcement agencies and prosecuting authorities under generally accepted government auditing standards (GAGAS) of records related to inventory of seized property and expenditures of forfeiture proceeds. The report must be submitted to the legislature within 90 days of the end of the fiscal year.

Technical Issue: It would be more appropriate to conduct the audits of the forfeiture records of the law enforcement agencies and prosecuting authorities based on established procedures and issue a special report rather than based on GAGAS.

Technical Issue: It is not clear what is meant by the audit report must be submitted to the legislature within 90 days of the end of the fiscal year. Does the bill require the report to be issued within 90 days of the state’s fiscal year end or the law enforcement agencies’ and prosecuting authorities’ fiscal year end? Most law enforcement agencies and prosecuting authorities in Minnesota have a fiscal year end of December 31. These agencies would do their final reporting for the year to the State Auditor after that date. We anticipate that the information reported may be used in identifying the agencies to be audited. Since there is no deadline identified in the language of this bill for when year-end forfeiture information must be reported to the State Auditor, there cannot be a deadline for when the audit report shall be submitted to the legislature. We foresee performing these audits throughout the year as time allows and submitting the report to the legislature immediately upon its completion and release.

**Assumptions**

The OSA assumed the following when determining the fiscal impact of HF4571-1UE.

All agencies and authorities will report electronically as they have in the past. The State Auditor currently has a web based reporting system that allows law enforcement agencies to login and report forfeitures continuously throughout the year.



The OSA will make its best effort to collect information from all law enforcement agencies and prosecuting authorities that are required to report. It will be the agencies' and authorities' responsibility to comply with the requirements.

Entities will be responsible for reporting accurate information. The OSA will review reported information and follow-up on information that seems unusual.

There are over 500 entities that could potentially seize and need to report forfeiture information. Historically, there have been approximately 320 agencies and authorities that have reported forfeitures to the State Auditor. Without previous experience, it is difficult to determine how much effort will be needed to meet the requirements to audit these agencies and authorities. The OSA would have a much better understanding of the work that needs to be done after the first year of review when knowledge is gained regarding the systems that maintain and account for forfeitures. Therefore, the OSA assumes, without completing any review, that it would limit the amount of audit work to 1,835 hours each year. The OSA believes we could audit up to 36 entities each year in this amount of time.

The OSA also assumes that it would be appropriate to use currently approved audit rates to determine the cost of performing 1,835 hours of audit work. The audit rates represent the full cost of each audit hour by staffing level and include salary, benefits, and other related overhead costs such as rent, equipment, and support. Approved audit rates do not include travel costs. Travel costs are based on past audit work that had similar travel requirements.

The OSA assumes that audits will be performed starting in 2022 once a full calendar year (2021) of reporting information is available.

Finally, the OSA assumes that it will not have to charge any of the entities being audited for the work performed. The OSA assumes that a direct General Fund Appropriation will be made to cover the cost of this work. Since the audit work performed will be done on a sample basis, the OSA assumes that the selected entities would not have to incur the costs.

**Expenditure and/or Revenue Formula**

The OSA expects it to take more time to collect and report on the new forfeiture reporting requirements than in subsequent years. In the first year, the OSA will need to spend extra time planning and developing the reporting method, updating and creating the report formats, educating agencies and authorities, testing forms, and reviewing the report. We estimate the hours and costs to be as follows:

Position	Planning	Development	Collection	Reporting	Total Hours	Hourly Rate	FICA/ Benefits Factor	Total Cost	
Legal Staff	-	112	-	80	192	52.83	1.24	12,578	
Supervisor	4	105	44	140	293	42.33		15,379	
Technology Staff	5	134	1	-	140	38.03		6,602	
Analyst	20	98	20	310	448	30.93		17,182	
Analyst	36	192	604	310	1,142	30.93		43,799	
<b>Total</b>	<b>65</b>	<b>641</b>	<b>669</b>	<b>840</b>	<b>2,215</b>			<b>95,540</b>	
Less Cost that can be absorbed:									
Legal Staff	-	(112)	-	(80)	(192)	52.83			(12,578)
Supervisor	(4)	(105)	(44)	(140)	(293)	42.33			(15,379)
Technology Staff	(5)	(134)	(1)	-	(140)	38.03			(6,602)
<b>Net Costs</b>	<b>56</b>	<b>290</b>	<b>624</b>	<b>620</b>	<b>1,590</b>			<b>60,981</b>	

In subsequent years, it will not be necessary for the OSA to spend time on planning and development. All of the time will be spent collecting the required information and reporting on it. We estimate the hours and costs to be as follows:

			Total	Hourly	FICA/ Benefits	Total

Position	Collection	Reporting	Hours	Rate	Factor	Cost	
Legal Staff	24	24	48	52.83	1.24	\$3,144	
Supervisor	59	28	87	42.33		4,567	
Technology Staff	2	-	2	38.03		94	
Analyst	48	144	192	30.93		7,364	
Analyst	420	134	554	30.93		21,248	
<b>Total</b>	<b>553</b>	<b>330</b>	<b>883</b>			<b>\$36,417</b>	
Less Cost that can be absorbed:							
Legal Staff	(24)	(24)	(48)	52.83			(3,144)
Supervisor	(59)	(28)	(87)	42.33			(4,567)
Technology Staff	(2)	-	(2)	38.03			(94)
<b>Net Costs</b>	<b>468</b>	<b>278</b>	<b>746</b>			<b>\$28,612</b>	

Calculation for annually auditing law enforcement agencies and prosecuting authorities:

Position	CY 2020 Approved Audit Rates	Hours	Cost
Local Government Auditor Senior	\$92.00	1,635	\$150,420
Local Government Auditor Staff Specialist	\$99.00	160	\$15,840
Local Government Auditor Director	\$111.00	20	\$2,220
Local Government Auditor Manager	\$124.00	10	\$1,240
Reviewer	\$124.00	10	\$1,240
Travel Costs			\$9,000
<b>Total</b>		<b>1,835</b>	<b>\$179,960</b>

### Long-Term Fiscal Considerations

The estimated costs are based on CY 2020 approved audit rates. The actual costs will increase in the future as salary, benefits, and other costs increase.

### Local Fiscal Impact

Law enforcement agencies and prosecuting authorities will have costs related to responding to questions and providing the OSA with information and records for the audit of the systems they use to account for the inventory of seized property and expenditures of forfeiture proceeds.

### References/Sources

**Agency Contact:** Matthew Lindemann

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