



Sen. Dan Kotowski

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1 AMENDMENT TO SENATE BILL 1013

2 AMENDMENT NO. _____. Amend Senate Bill 1013, AS AMENDED,
3 by inserting the following immediately above Article 99:

4 "Article 2.

5 Section 2-1. Short title. This Article may be cited as the
6 Public Corruption Profit Forfeiture Act, and references in this
7 Article to "this Act" mean this Article.

8 Section 2-5. Legislative declaration. Public corruption is
9 a far reaching, continuing and extremely profitable criminal
10 enterprise, which diverts significant amounts of public money
11 for illicit purposes. Public corruption-related schemes
12 persist despite the threat of prosecution and the actual
13 prosecution and imprisonment of individual participants
14 because existing sanctions do not effectively reach the money
15 and other assets generated by such schemes. It is therefore

1 necessary to supplement existing sanctions by mandating
2 forfeiture of money and other assets generated by public
3 corruption-related activities. Forfeiture diminishes the
4 financial incentives which encourage and sustain public
5 corruption, restores public moneys which have been diverted by
6 public corruption, and secures for the People of the State of
7 Illinois assets to be used for enforcement of laws governing
8 public corruption.

9 Section 2-10. Penalties.

10 (a) A person who is convicted of a violation of any of the
11 following Sections, subsections, and clauses of the Criminal
12 Code of 1961:

13 (1) clause (a)(6) of Section 12-6 (intimidation by a
14 public official),

15 (2) Section 33-1 (bribery), or

16 (3) subsection (a) of Section 33E-7 (kickbacks),

17 shall forfeit to the State of Illinois:

18 (A) any profits or proceeds and any property or
19 property interest he or she has acquired or maintained in
20 violation of any of the offenses listed in clauses (1)
21 through (3) of this subsection (a) that the court
22 determines, after a forfeiture hearing under subsection
23 (b) of this Section, to have been acquired or maintained as
24 a result of violating any of the offenses listed in clauses
25 (1) through (3) of this subsection (a); and

1 (B) any interest in, security of, claim against, or
2 property or contractual right of any kind affording a
3 source of influence over, any enterprise which he or she
4 has established, operated, controlled, conducted, or
5 participated in the conduct of, in violation of any of the
6 offenses listed in clauses (1) through (3) of this
7 subsection (a) that the court determines, after a
8 forfeiture hearing under subsection (b) of this Section, to
9 have been acquired or maintained as a result of violating
10 any of the offenses listed in clauses (1) through (3) of
11 this subsection (a) or used to facilitate a violation of
12 one of the offenses listed in clauses (1) through (3) of
13 this subsection (a).

14 (b) The court shall, upon petition by the Attorney General
15 or State's Attorney, at any time after the filing of an
16 information or return of an indictment, conduct a hearing to
17 determine whether any property or property interest is subject
18 to forfeiture under this Act. At the forfeiture hearing the
19 people shall have the burden of establishing, by a
20 preponderance of the evidence, that property or property
21 interests are subject to forfeiture under this Act. There is a
22 rebuttable presumption at such hearing that any property or
23 property interest of a person charged by information or
24 indictment with a violation of any of the offenses listed in
25 clauses (1) through (3) of subsection (a) of this Section or
26 who is convicted of a violation of any of the offenses listed

1 in clauses (1) through (3) of subsection (a) of this Section is
2 subject to forfeiture under this Section if the State
3 establishes by a preponderance of the evidence that:

4 (1) such property or property interest was acquired by
5 such person during the period of the violation of any of
6 the offenses listed in clauses (1) through (3) of
7 subsection (a) of this Section or within a reasonable time
8 after such period; and

9 (2) there was no likely source for such property or
10 property interest other than the violation of any of the
11 offenses listed in clauses (1) through (3) of subsection
12 (a) of this Section.

13 (c) In an action brought by the People of the State of
14 Illinois under this Act, wherein any restraining order,
15 injunction or prohibition or any other action in connection
16 with any property or property interest subject to forfeiture
17 under this Act is sought, the circuit court which shall preside
18 over the trial of the person or persons charged with any of the
19 offenses listed in clauses (1) through (3) of subsection (a) of
20 this Section shall first determine whether there is probable
21 cause to believe that the person or persons so charged have
22 committed a violation of any of the offenses listed in clauses
23 (1) through (3) of subsection (a) of this Section and whether
24 the property or property interest is subject to forfeiture
25 pursuant to this Act.

26 In order to make such a determination, prior to entering

1 any such order, the court shall conduct a hearing without a
2 jury, wherein the People shall establish that there is: (i)
3 probable cause that the person or persons so charged have
4 committed one of the offenses listed in clauses (1) through (3)
5 of subsection (a) of this Section and (ii) probable cause that
6 any property or property interest may be subject to forfeiture
7 pursuant to this Act. Such hearing may be conducted
8 simultaneously with a preliminary hearing, if the prosecution
9 is commenced by information or complaint, or by motion of the
10 People, at any stage in the proceedings. The court may accept a
11 finding of probable cause at a preliminary hearing following
12 the filing of a charge for violating one of the offenses listed
13 in clauses (1) through (3) of subsection (a) of this Section or
14 the return of an indictment by a grand jury charging one of the
15 offenses listed in clauses (1) through (3) of subsection (a) of
16 this Section as sufficient evidence of probable cause as
17 provided in item (i) above.

18 Upon such a finding, the circuit court shall enter such
19 restraining order, injunction or prohibition, or shall take
20 such other action in connection with any such property or
21 property interest subject to forfeiture under this Act, as is
22 necessary to insure that such property is not removed from the
23 jurisdiction of the court, concealed, destroyed or otherwise
24 disposed of by the owner of that property or property interest
25 prior to a forfeiture hearing under subsection (b) of this
26 Section. The Attorney General or State's Attorney shall file a

1 certified copy of such restraining order, injunction or other
2 prohibition with the recorder of deeds or registrar of titles
3 of each county where any such property of the defendant may be
4 located. No such injunction, restraining order or other
5 prohibition shall affect the rights of any bona fide purchaser,
6 mortgagee, judgment creditor or other lien holder arising prior
7 to the date of such filing.

8 The court may, at any time, upon verified petition by the
9 defendant, conduct a hearing to release all or portions of any
10 such property or interest which the court previously determined
11 to be subject to forfeiture or subject to any restraining
12 order, injunction, or prohibition or other action. The court
13 may release such property to the defendant for good cause shown
14 and within the sound discretion of the court.

15 (d) Prosecution under this Act may be commenced by the
16 Attorney General or a State's Attorney.

17 (e) Upon an order of forfeiture being entered pursuant to
18 subsection (b) of this Section, the court shall authorize the
19 Attorney General to seize any property or property interest
20 declared forfeited under this Act and under such terms and
21 conditions as the court shall deem proper. Any property or
22 property interest that has been the subject of an entered
23 restraining order, injunction or prohibition or any other
24 action filed under subsection (c) shall be forfeited unless the
25 claimant can show by a preponderance of the evidence that the
26 property or property interest has not been acquired or

1 maintained as a result of a violation of any of the offenses
2 listed in clauses (1) through (3) of subsection (a) of this
3 Section or has not been used to facilitate a violation of any
4 of the offenses listed in clauses (1) through (3) of subsection
5 (a) of this Section.

6 (f) The Attorney General or his or her designee is
7 authorized to sell all property forfeited and seized pursuant
8 to this Act, unless such property is required by law to be
9 destroyed or is harmful to the public, and, after the deduction
10 of all requisite expenses of administration and sale, shall
11 distribute the proceeds of such sale, along with any moneys
12 forfeited or seized, in accordance with subsection (g).

13 (g) All monies and the sale proceeds of all other property
14 forfeited and seized pursuant to this Act shall be distributed
15 as follows:

16 (1) An amount equal to 50% shall be distributed to the
17 unit of local government whose officers or employees
18 conducted the investigation into a violation of any of the
19 offenses listed in clauses (1) through (3) of subsection
20 (a) of this Section and caused the arrest or arrests and
21 prosecution leading to the forfeiture. Amounts distributed
22 to units of local government shall be used for enforcement
23 of laws governing public corruption, or for other law
24 enforcement purposes. In the event, however, that the
25 investigation, arrest or arrests and prosecution leading
26 to the forfeiture were undertaken solely by a State agency,

1 the portion provided hereunder shall be paid into the State
2 Asset Forfeiture Fund in the State treasury to be used by
3 that State agency in accordance with law.

4 (2) An amount equal to 12.5% shall be distributed to
5 the county in which the prosecution resulting in the
6 forfeiture was instituted, deposited in a special fund in
7 the county treasury and appropriated to the State's
8 Attorney for use in accordance with law.

9 (3) An amount equal to 12.5% shall be distributed to
10 the Office of the State's Attorneys Appellate Prosecutor
11 and deposited in the State Asset Forfeiture Fund, to be
12 used by the Office of the State's Attorneys Appellate
13 Prosecutor for additional expenses incurred in prosecuting
14 appeals arising under this Act. Any amounts remaining in
15 the Fund after all additional expenses have been paid shall
16 be used by the Office to reduce the participating county
17 contributions to the Office on a prorated basis as
18 determined by the board of governors of the Office of the
19 State's Attorneys Appellate Prosecutor based on the
20 populations of the participating counties.

21 (4) An amount equal to 25% shall be paid into the State
22 Asset Forfeiture Fund in the State treasury to be used by
23 the Department of State Police for the funding of the
24 investigation of public corruption activities. Any amounts
25 remaining in the Fund after full funding of such
26 investigations shall be used by the Department in

1 accordance with law to fund its other enforcement
2 activities.

3 (h) All monies deposited pursuant to this Act in the State
4 Asset Forfeiture Fund are appropriated, on a continuing basis,
5 to the Department of State Police to be used in the manner set
6 forth in this Section.

7 Section 2-15. Forfeiture of political contribution.
8 Whenever any person pleads guilty to, or is found guilty of,
9 any offense under subsection (a) of Section 2-10 of this Act,
10 in addition to any other penalty imposed by the court, all
11 contributions (as defined by Section 9-1.4 of the Election
12 Code) or other receipts held at the time of forfeiture by a
13 political committee (as defined by Section 9-1.9 of the
14 Election Code) or an organization subject to Section 9-7.5 of
15 the Election Code, which is controlled by that person shall be
16 paid to the State within 30 days from the date of the entry of
17 the guilty plea or conviction. Payments received by the State
18 pursuant to this Section shall be deposited into the General
19 Revenue Fund.

20 Section 2-20. Fines.

21 (a) Whenever any person pleads guilty to or is found guilty
22 of an offense under this Act, a fine may be levied in addition
23 to any other penalty imposed by the court.

24 (b) In determining whether to impose a fine under this

1 Section and the amount, time for payment, and method of payment
2 of any fine so imposed, the court shall:

3 (1) consider the defendant's income, regardless of
4 source, the defendant's earning capacity, and the
5 defendant's financial resources, as well as the nature of
6 the burden the fine will impose on the defendant and any
7 person legally or financially dependent upon the
8 defendant;

9 (2) consider the proof received at trial, or as a
10 result of a plea of guilty, concerning any profits or other
11 proceeds derived by the defendant from the violation of
12 this Act;

13 (3) take into account any other pertinent equitable
14 considerations; and

15 (4) give primary consideration to the need to deprive
16 the defendant of illegally obtained profits or other
17 proceeds from the offense.

18 (c) As a condition of a fine, the court may require that
19 payment be made in specified installments or within a specified
20 period of time, but such period shall not be greater than the
21 maximum applicable term of probation or imprisonment,
22 whichever is greater. Unless otherwise specified, payment of a
23 fine shall be due immediately.

24 (d) If a fine for a violation of this Act is imposed on an
25 organization, it is the duty of each individual authorized to
26 make disbursements of the assets of the organization to pay the

1 fine from assets of the organization.

2 (e) (1) A defendant who has been sentenced to pay a fine,
3 and who has paid part but not all of such fine, may petition
4 the court for an extension of the time for payment or
5 modification of the method of payment.

6 (2) The court may grant a petition made pursuant to
7 this subsection if it finds that:

8 (i) the circumstances that warranted payment by
9 the time or method specified no longer exist; or

10 (ii) it is otherwise unjust to require payment of
11 the fine by the time or method specified.

12 Section 2-25. Distribution of proceeds of fines.

13 (a) The proceeds of all fines received under the provisions
14 of this Act shall be transmitted to and deposited in the
15 treasurer's office at the level of government as follows:

16 (1) If the seizure was made by a combination of law
17 enforcement personnel representing differing units of
18 local government, the court levying the fine shall
19 equitably allocate 50% of the fine among these units of
20 local government and shall allocate 50% to the county
21 general corporate fund. In the event that the seizure was
22 made by law enforcement personnel representing a unit of
23 local government from a municipality where the number of
24 inhabitants exceeds 2 million, the court levying the fine
25 shall allocate 100% of the fine to that unit of local

1 government. If the seizure was made by a combination of law
2 enforcement personnel representing differing units of
3 local government, and at least one of those units
4 represents a municipality where the number of inhabitants
5 exceeds 2 million, the court shall equitably allocate 100%
6 of the proceeds of the fines received among the differing
7 units of local government.

8 (2) If such seizure was made by State law enforcement
9 personnel, then the court shall allocate 50% to the State
10 treasury and 50% to the county general corporate fund.

11 (3) If a State law enforcement agency in combination
12 with a law enforcement agency or agencies of a unit or
13 units of local government conducted the seizure, the court
14 shall equitably allocate 50% of the fines to or among the
15 law enforcement agency or agencies of the unit or units of
16 local government which conducted the seizure and shall
17 allocate 50% to the county general corporate fund.

18 (b) The proceeds of all fines allocated to the law
19 enforcement agency or agencies of the unit or units of local
20 government pursuant to subsection (a) shall be made available
21 to that law enforcement agency as expendable receipts for use
22 in the enforcement of laws regulating public corruption and
23 other laws. The proceeds of fines awarded to the State treasury
24 shall be deposited in the State Asset Forfeiture Fund. Monies
25 from this Fund may be used by the Department of State Police in
26 the enforcement of laws regulating public corruption and other

1 laws; and all other monies shall be paid into the General
2 Revenue Fund in the State treasury.

3 Section 2-30. Preventing and restraining violations.

4 (a) The circuit courts of the State shall have jurisdiction
5 to prevent and restrain violations of this Act by issuing
6 appropriate orders, including, but not limited to: ordering any
7 person to divest himself of any interest, direct or indirect,
8 in any enterprise; imposing reasonable restrictions on the
9 future activities or investment of any person, including, but
10 not limited to, prohibiting any person from engaging in the
11 same type of endeavor as the enterprise engaged in, the
12 activities of which affect business in the State of Illinois;
13 or ordering dissolution or reorganization of any enterprise,
14 making due provision for the rights of innocent persons.

15 (b) The Attorney General or the State's Attorney may
16 institute proceedings under this Section. In any action brought
17 by the State of Illinois under this Section, the court shall
18 proceed as soon as practicable to the hearing and determination
19 thereof. Pending that determination, the court may at any time
20 enter such temporary restraining orders, preliminary or
21 permanent injunctions, or prohibitions, or take such other
22 actions including the acceptance of satisfactory performance
23 bonds by a defendant, as it shall deem proper.

24 (c) Any person directly injured in his business, person or
25 property by reason of a violation of this Act may sue the

1 violator therefor in any appropriate circuit court and shall
2 recover threefold the damages he or she sustains and the cost
3 of the action, including a reasonable attorney's fee.

4 (d) A final judgment entered in favor of the People of the
5 State of Illinois in any criminal proceeding brought under this
6 Act shall estop the defendant in the criminal case from denying
7 the essential allegations of the criminal offense in any
8 subsequent civil proceeding brought under this Act.

9 Section 2-35. Venue. Any civil action or proceeding under
10 this Act against any person may be instituted in the circuit
11 court for any county in which such person resides, is found,
12 has an agent, transacts his or her affairs, or in which
13 property that is the subject of these proceedings is located.

14 Section 2-40. Intent. It is the intent of the General
15 Assembly that this Act be liberally construed so as to effect
16 the purposes of this Act and be construed in accordance with
17 similar provisions contained in the Narcotics Profit
18 Forfeiture Act.

19 Section 2-45. Severability. If any provision of this Act or
20 the application thereof to any person or circumstance is
21 invalid, such invalidation shall not affect other provisions or
22 applications of the Act which can be given effect without the
23 invalid provision or application, and to this end the

1 provisions of this Act are declared to be severable.

2 Section 2-50. The Election Code is amended by changing
3 Section 9-8.10 as follows:

4 (10 ILCS 5/9-8.10)

5 Sec. 9-8.10. Use of political committee and other reporting
6 organization funds.

7 (a) A political committee, or organization subject to
8 Section 9-7.5, shall not make expenditures:

9 (1) In violation of any law of the United States or of
10 this State.

11 (2) Clearly in excess of the fair market value of the
12 services, materials, facilities, or other things of value
13 received in exchange.

14 (3) For satisfaction or repayment of any debts other
15 than loans made to the committee or to the public official
16 or candidate on behalf of the committee or repayment of
17 goods and services purchased by the committee under a
18 credit agreement. Nothing in this Section authorizes the
19 use of campaign funds to repay personal loans. The
20 repayments shall be made by check written to the person who
21 made the loan or credit agreement. The terms and conditions
22 of any loan or credit agreement to a committee shall be set
23 forth in a written agreement, including but not limited to
24 the method and amount of repayment, that shall be executed

1 by the chairman or treasurer of the committee at the time
2 of the loan or credit agreement. The loan or agreement
3 shall also set forth the rate of interest for the loan, if
4 any, which may not substantially exceed the prevailing
5 market interest rate at the time the agreement is executed.

6 (4) For the satisfaction or repayment of any debts or
7 for the payment of any expenses relating to a personal
8 residence. Campaign funds may not be used as collateral for
9 home mortgages.

10 (5) For clothing or personal laundry expenses, except
11 clothing items rented by the public official or candidate
12 for his or her own use exclusively for a specific
13 campaign-related event, provided that committees may
14 purchase costumes, novelty items, or other accessories
15 worn primarily to advertise the candidacy.

16 (6) For the travel expenses of any person unless the
17 travel is necessary for fulfillment of political,
18 governmental, or public policy duties, activities, or
19 purposes.

20 (7) For membership or club dues charged by
21 organizations, clubs, or facilities that are primarily
22 engaged in providing health, exercise, or recreational
23 services; provided, however, that funds received under
24 this Article may be used to rent the clubs or facilities
25 for a specific campaign-related event.

26 (8) In payment for anything of value or for

1 reimbursement of any expenditure for which any person has
2 been reimbursed by the State or any person. For purposes of
3 this item (8), a per diem allowance is not a reimbursement.

4 (9) For the purchase of or installment payment for a
5 motor vehicle unless the political committee can
6 demonstrate that purchase of a motor vehicle is more
7 cost-effective than leasing a motor vehicle as permitted
8 under this item (9). A political committee may lease or
9 purchase and insure, maintain, and repair a motor vehicle
10 if the vehicle will be used primarily for campaign purposes
11 or for the performance of governmental duties. A committee
12 shall not make expenditures for use of the vehicle for
13 non-campaign or non-governmental purposes. Persons using
14 vehicles not purchased or leased by a political committee
15 may be reimbursed for actual mileage for the use of the
16 vehicle for campaign purposes or for the performance of
17 governmental duties. The mileage reimbursements shall be
18 made at a rate not to exceed the standard mileage rate
19 method for computation of business expenses under the
20 Internal Revenue Code.

21 (10) Directly for an individual's tuition or other
22 educational expenses, except for governmental or political
23 purposes directly related to a candidate's or public
24 official's duties and responsibilities.

25 (11) For payments to a public official or candidate or
26 his or her family member unless for compensation for

1 services actually rendered by that person. The provisions
2 of this item (11) do not apply to expenditures by a
3 political committee in an aggregate amount not exceeding
4 the amount of funds reported to and certified by the State
5 Board or county clerk as available as of June 30, 1998, in
6 the semi-annual report of contributions and expenditures
7 filed by the political committee for the period concluding
8 June 30, 1998.

9 (b) The Board shall have the authority to investigate, upon
10 receipt of a verified complaint, violations of the provisions
11 of this Section. The Board may levy a fine on any person who
12 knowingly makes expenditures in violation of this Section and
13 on any person who knowingly makes a malicious and false
14 accusation of a violation of this Section. The Board may act
15 under this subsection only upon the affirmative vote of at
16 least 5 of its members. The fine shall not exceed \$500 for each
17 expenditure of \$500 or less and shall not exceed the amount of
18 the expenditure plus \$500 for each expenditure greater than
19 \$500. The Board shall also have the authority to render rulings
20 and issue opinions relating to compliance with this Section.

21 (c) Nothing in this Section prohibits the expenditure of
22 funds of (i) a political committee controlled by an
23 officeholder or by a candidate or (ii) an organization subject
24 to Section 9-7.5 to defray the customary and reasonable
25 expenses of an officeholder in connection with the performance
26 of governmental and public service functions.

1 (d) Nothing in this Section prohibits the funds of a
2 political committee, or an organization subject to Section
3 9-7.5, which is controlled by a person convicted of a violation
4 of any of the offenses listed in subsection (a) of Section 10
5 of the Public Corruption Profit Forfeiture Act from being
6 forfeited to the State under Section 15 of the Public
7 Corruption Profit Forfeiture Act.

8 (Source: P.A. 93-615, eff. 11-19-03; 93-685, eff. 7-8-04.)".