

SB2551



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2551

Introduced 1/13/2010, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

New Act
10 ILCS 5/9-8.10

Creates the Public Corruption Profit Forfeiture Act and amends the Election Code. Provides for the forfeiture to the State of Illinois of proceeds and profits derived through violations of the statutes concerning intimidation by public officials, bribery, or providing, attempting, offering to provide or soliciting, accepting, or attempting to accept a kickback, or including, directly or indirectly, the amount of any kickback prohibited in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to any unit of State or local government for a public contract a kickback. Provides for distribution of the proceeds from forfeited property. Includes a continuing appropriation to the Department of State Police. Effective immediately.

LRB096 17492 RLC 32848 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Public
5 Corruption Profit Forfeiture Act.

6 Section 5. Legislative declaration. Public corruption is a
7 far-reaching, continuing and extremely profitable criminal
8 enterprise, which diverts significant amounts of public money
9 for illicit purposes. Public corruption-related schemes
10 persist despite the threat of prosecution and the actual
11 prosecution and imprisonment of individual participants
12 because existing sanctions do not effectively reach the money
13 and other assets generated by such schemes. It is therefore
14 necessary to supplement existing sanctions by mandating
15 forfeiture of money and other assets generated by public
16 corruption-related activities. Forfeiture diminishes the
17 financial incentives which encourage and sustain public
18 corruption, restores public moneys which have been diverted by
19 public corruption, and secures for the People of the State of
20 Illinois assets to be used for enforcement of laws governing
21 public corruption.

22 Section 10. Penalties.

1 (a) A person who is convicted of a violation of any of the
2 following Sections, subsections, and clauses of the Criminal
3 Code of 1961:

4 (1) clause (a)(6) of Section 12-6 (intimidation by a
5 public official),

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

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

8 shall forfeit to the State of Illinois:

9 (A) any profits or proceeds and any property or
10 property interest he or she has acquired or maintained in
11 violation of any of the offenses listed in clauses (1)
12 through (3) of this subsection (a) that the court
13 determines, after a forfeiture hearing under subsection
14 (b) of this Section, to have been acquired or maintained as
15 a result of violating any of the offenses listed in clauses
16 (1) through (3) of this subsection (a); and

17 (B) any interest in, security of, claim against, or
18 property or contractual right of any kind affording a
19 source of influence over, any enterprise which he or she
20 has established, operated, controlled, conducted, or
21 participated in the conduct of, in violation of any of the
22 offenses listed in clauses (1) through (3) of this
23 subsection (a) that the court determines, after a
24 forfeiture hearing under subsection (b) of this Section, to
25 have been acquired or maintained as a result of violating
26 any of the offenses listed in clauses (1) through (3) of

1 this subsection (a) or used to facilitate a violation of
2 one of the offenses listed in clauses (1) through (3) of
3 this subsection (a).

4 (b) The court shall, upon petition by the Attorney General
5 or State's Attorney, at any time after the filing of an
6 information or return of an indictment, conduct a hearing to
7 determine whether any property or property interest is subject
8 to forfeiture under this Act. At the forfeiture hearing the
9 people shall have the burden of establishing, by a
10 preponderance of the evidence, that property or property
11 interests are subject to forfeiture under this Act. There is a
12 rebuttable presumption at such hearing that any property or
13 property interest of a person charged by information or
14 indictment with a violation of any of the offenses listed in
15 clauses (1) through (3) of subsection (a) of this Section or
16 who is convicted of a violation of any of the offenses listed
17 in clauses (1) through (3) of subsection (a) of this Section is
18 subject to forfeiture under this Section if the State
19 establishes by a preponderance of the evidence that:

20 (1) such property or property interest was acquired by
21 such person during the period of the violation of any of
22 the offenses listed in clauses (1) through (3) of
23 subsection (a) of this Section or within a reasonable time
24 after such period; and

25 (2) there was no likely source for such property or
26 property interest other than the violation of any of the

1 offenses listed in clauses (1) through (3) of subsection
2 (a) of this Section.

3 (c) In an action brought by the People of the State of
4 Illinois under this Act, wherein any restraining order,
5 injunction or prohibition or any other action in connection
6 with any property or property interest subject to forfeiture
7 under this Act is sought, the circuit court which shall preside
8 over the trial of the person or persons charged with any of the
9 offenses listed in clauses (1) through (3) of subsection (a) of
10 this Section shall first determine whether there is probable
11 cause to believe that the person or persons so charged have
12 committed a violation of any of the offenses listed in clauses
13 (1) through (3) of subsection (a) of this Section and whether
14 the property or property interest is subject to forfeiture
15 pursuant to this Act.

16 In order to make such a determination, prior to entering
17 any such order, the court shall conduct a hearing without a
18 jury, wherein the People shall establish that there is: (i)
19 probable cause that the person or persons so charged have
20 committed one of the offenses listed in clauses (1) through (3)
21 of subsection (a) of this Section and (ii) probable cause that
22 any property or property interest may be subject to forfeiture
23 pursuant to this Act. Such hearing may be conducted
24 simultaneously with a preliminary hearing, if the prosecution
25 is commenced by information or complaint, or by motion of the
26 People, at any stage in the proceedings. The court may accept a

1 finding of probable cause at a preliminary hearing following
2 the filing of a charge for violating one of the offenses listed
3 in clauses (1) through (3) of subsection (a) of this Section or
4 the return of an indictment by a grand jury charging one of the
5 offenses listed in clauses (1) through (3) of subsection (a) of
6 this Section as sufficient evidence of probable cause as
7 provided in item (i) above.

8 Upon such a finding, the circuit court shall enter such
9 restraining order, injunction or prohibition, or shall take
10 such other action in connection with any such property or
11 property interest subject to forfeiture under this Act, as is
12 necessary to insure that such property is not removed from the
13 jurisdiction of the court, concealed, destroyed or otherwise
14 disposed of by the owner of that property or property interest
15 prior to a forfeiture hearing under subsection (b) of this
16 Section. The Attorney General or State's Attorney shall file a
17 certified copy of such restraining order, injunction or other
18 prohibition with the recorder of deeds or registrar of titles
19 of each county where any such property of the defendant may be
20 located. No such injunction, restraining order or other
21 prohibition shall affect the rights of any bona fide purchaser,
22 mortgagee, judgment creditor or other lien holder arising prior
23 to the date of such filing.

24 The court may, at any time, upon verified petition by the
25 defendant, conduct a hearing to release all or portions of any
26 such property or interest which the court previously determined

1 to be subject to forfeiture or subject to any restraining
2 order, injunction, or prohibition or other action. The court
3 may release such property to the defendant for good cause shown
4 and within the sound discretion of the court.

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

7 (e) Upon an order of forfeiture being entered pursuant to
8 subsection (b) of this Section, the court shall authorize the
9 Attorney General to seize any property or property interest
10 declared forfeited under this Act and under such terms and
11 conditions as the court shall deem proper. Any property or
12 property interest that has been the subject of an entered
13 restraining order, injunction or prohibition or any other
14 action filed under subsection (c) shall be forfeited unless the
15 claimant can show by a preponderance of the evidence that the
16 property or property interest has not been acquired or
17 maintained as a result of a violation of any of the offenses
18 listed in clauses (1) through (3) of subsection (a) of this
19 Section or has not been used to facilitate a violation of any
20 of the offenses listed in clauses (1) through (3) of subsection
21 (a) of this Section.

22 (f) The Attorney General or his or her designee is
23 authorized to sell all property forfeited and seized pursuant
24 to this Act, unless such property is required by law to be
25 destroyed or is harmful to the public, and, after the deduction
26 of all requisite expenses of administration and sale, shall

1 distribute the proceeds of such sale, along with any moneys
2 forfeited or seized, in accordance with subsection (g).

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

6 (1) An amount equal to 50% shall be distributed to the
7 unit of local government whose officers or employees
8 conducted the investigation into a violation of any of the
9 offenses listed in clauses (1) through (3) of subsection
10 (a) of this Section and caused the arrest or arrests and
11 prosecution leading to the forfeiture. Amounts distributed
12 to units of local government shall be used for enforcement
13 of laws governing public corruption, or for other law
14 enforcement purposes. In the event, however, that the
15 investigation, arrest or arrests and prosecution leading
16 to the forfeiture were undertaken solely by a State agency,
17 the portion provided hereunder shall be paid into the State
18 Asset Forfeiture Fund in the State treasury to be used by
19 that State agency in accordance with law.

20 (2) An amount equal to 12.5% shall be distributed to
21 the county in which the prosecution resulting in the
22 forfeiture was instituted, deposited in a special fund in
23 the county treasury and appropriated to the State's
24 Attorney for use in accordance with law.

25 (3) An amount equal to 12.5% shall be distributed to
26 the Office of the State's Attorneys Appellate Prosecutor

1 and deposited in the State Asset Forfeiture Fund, to be
2 used by the Office of the State's Attorneys Appellate
3 Prosecutor for additional expenses incurred in prosecuting
4 appeals arising under this Act. Any amounts remaining in
5 the Fund after all additional expenses have been paid shall
6 be used by the Office to reduce the participating county
7 contributions to the Office on a prorated basis as
8 determined by the board of governors of the Office of the
9 State's Attorneys Appellate Prosecutor based on the
10 populations of the participating counties.

11 (4) An amount equal to 25% shall be paid into the State
12 Asset Forfeiture Fund in the State treasury to be used by
13 the Department of State Police for the funding of the
14 investigation of public corruption activities. Any amounts
15 remaining in the Fund after full funding of such
16 investigations shall be used by the Department in
17 accordance with law to fund its other enforcement
18 activities.

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

23 Section 15. Forfeiture of political contribution. Whenever
24 any person pleads guilty to, or is found guilty of, any offense
25 under subsection (a) of Section 10 of this Act, in addition to

1 any other penalty imposed by the court, all contributions (as
2 defined by Section 9-1.4 of the Election Code) or other
3 receipts held at the time of forfeiture by a political
4 committee (as defined by Section 9-1.9 of the Election Code) or
5 an organization subject to Section 9-7.5 of the Election Code,
6 which is controlled by that person shall be paid to the State
7 within 30 days from the date of the entry of the guilty plea or
8 conviction. Payments received by the State pursuant to this
9 Section shall be deposited into the General Revenue Fund.

10 Section 20. Fines.

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

14 (b) In determining whether to impose a fine under this
15 Section and the amount, time for payment, and method of payment
16 of any fine so imposed, the court shall:

17 (1) consider the defendant's income, regardless of
18 source, the defendant's earning capacity, and the
19 defendant's financial resources, as well as the nature of
20 the burden the fine will impose on the defendant and any
21 person legally or financially dependent upon the
22 defendant;

23 (2) consider the proof received at trial, or as a
24 result of a plea of guilty, concerning any profits or other
25 proceeds derived by the defendant from the violation of

1 this Act;

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

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

7 (c) As a condition of a fine, the court may require that
8 payment be made in specified installments or within a specified
9 period of time, but such period shall not be greater than the
10 maximum applicable term of probation or imprisonment,
11 whichever is greater. Unless otherwise specified, payment of a
12 fine shall be due immediately.

13 (d) If a fine for a violation of this Act is imposed on an
14 organization, it is the duty of each individual authorized to
15 make disbursements of the assets of the organization to pay the
16 fine from assets of the organization.

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

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

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

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

1 Section 25. Distribution of proceeds of fines.

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

5 (1) If the seizure was made by a combination of law
6 enforcement personnel representing differing units of
7 local government, the court levying the fine shall
8 equitably allocate 50% of the fine among these units of
9 local government and shall allocate 50% to the county
10 general corporate fund. In the event that the seizure was
11 made by law enforcement personnel representing a unit of
12 local government from a municipality where the number of
13 inhabitants exceeds 2 million, the court levying the fine
14 shall allocate 100% of the fine to that unit of local
15 government. If the seizure was made by a combination of law
16 enforcement personnel representing differing units of
17 local government, and at least one of those units
18 represents a municipality where the number of inhabitants
19 exceeds 2 million, the court shall equitably allocate 100%
20 of the proceeds of the fines received among the differing
21 units of local government.

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

25 (3) If a State law enforcement agency in combination

1 with a law enforcement agency or agencies of a unit or
2 units of local government conducted the seizure, the court
3 shall equitably allocate 50% of the fines to or among the
4 law enforcement agency or agencies of the unit or units of
5 local government which conducted the seizure and shall
6 allocate 50% to the county general corporate fund.

7 (b) The proceeds of all fines allocated to the law
8 enforcement agency or agencies of the unit or units of local
9 government pursuant to subsection (a) shall be made available
10 to that law enforcement agency as expendable receipts for use
11 in the enforcement of laws regulating public corruption and
12 other laws. The proceeds of fines awarded to the State treasury
13 shall be deposited in the State Asset Forfeiture Fund. Monies
14 from this Fund may be used by the Department of State Police in
15 the enforcement of laws regulating public corruption and other
16 laws; and all other monies shall be paid into the General
17 Revenue Fund in the State treasury.

18 Section 30. Preventing and restraining violations.

19 (a) The circuit courts of the State shall have jurisdiction
20 to prevent and restrain violations of this Act by issuing
21 appropriate orders, including, but not limited to: ordering any
22 person to divest himself of any interest, direct or indirect,
23 in any enterprise; imposing reasonable restrictions on the
24 future activities or investment of any person, including, but
25 not limited to, prohibiting any person from engaging in the

1 same type of endeavor as the enterprise engaged in, the
2 activities of which affect business in the State of Illinois;
3 or ordering dissolution or reorganization of any enterprise,
4 making due provision for the rights of innocent persons.

5 (b) The Attorney General or the State's Attorney may
6 institute proceedings under this Section. In any action brought
7 by the State of Illinois under this Section, the court shall
8 proceed as soon as practicable to the hearing and determination
9 thereof. Pending that determination, the court may at any time
10 enter such temporary restraining orders, preliminary or
11 permanent injunctions, or prohibitions, or take such other
12 actions including the acceptance of satisfactory performance
13 bonds by a defendant, as it shall deem proper.

14 (c) Any person directly injured in his business, person or
15 property by reason of a violation of this Act may sue the
16 violator therefor in any appropriate circuit court and shall
17 recover threefold the damages he or she sustains and the cost
18 of the action, including a reasonable attorney's fee.

19 (d) A final judgment entered in favor of the People of the
20 State of Illinois in any criminal proceeding brought under this
21 Act shall estop the defendant in the criminal case from denying
22 the essential allegations of the criminal offense in any
23 subsequent civil proceeding brought under this Act.

24 Section 35. Venue. Any civil action or proceeding under
25 this Act against any person may be instituted in the circuit

1 court for any county in which such person resides, is found,
2 has an agent, transacts his or her affairs, or in which
3 property that is the subject of these proceedings is located.

4 Section 40. Intent. It is the intent of the General
5 Assembly that this Act be liberally construed so as to effect
6 the purposes of this Act and be construed in accordance with
7 similar provisions contained in the Narcotics Profit
8 Forfeiture Act.

9 Section 45. Severability. If any provision of this Act or
10 the application thereof to any person or circumstance is
11 invalid, such invalidation shall not affect other provisions or
12 applications of the Act which can be given effect without the
13 invalid provision or application, and to this end the
14 provisions of this Act are declared to be severable.

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

17 (10 ILCS 5/9-8.10)

18 Sec. 9-8.10. Use of political committee and other reporting
19 organization funds.

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

22 (1) In violation of any law of the United States or of

1 this State.

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

5 (3) For satisfaction or repayment of any debts other
6 than loans made to the committee or to the public official
7 or candidate on behalf of the committee or repayment of
8 goods and services purchased by the committee under a
9 credit agreement. Nothing in this Section authorizes the
10 use of campaign funds to repay personal loans. The
11 repayments shall be made by check written to the person who
12 made the loan or credit agreement. The terms and conditions
13 of any loan or credit agreement to a committee shall be set
14 forth in a written agreement, including but not limited to
15 the method and amount of repayment, that shall be executed
16 by the chairman or treasurer of the committee at the time
17 of the loan or credit agreement. The loan or agreement
18 shall also set forth the rate of interest for the loan, if
19 any, which may not substantially exceed the prevailing
20 market interest rate at the time the agreement is executed.

21 (4) For the satisfaction or repayment of any debts or
22 for the payment of any expenses relating to a personal
23 residence. Campaign funds may not be used as collateral for
24 home mortgages.

25 (5) For clothing or personal laundry expenses, except
26 clothing items rented by the public official or candidate

1 for his or her own use exclusively for a specific
2 campaign-related event, provided that committees may
3 purchase costumes, novelty items, or other accessories
4 worn primarily to advertise the candidacy.

5 (6) For the travel expenses of any person unless the
6 travel is necessary for fulfillment of political,
7 governmental, or public policy duties, activities, or
8 purposes.

9 (7) For membership or club dues charged by
10 organizations, clubs, or facilities that are primarily
11 engaged in providing health, exercise, or recreational
12 services; provided, however, that funds received under
13 this Article may be used to rent the clubs or facilities
14 for a specific campaign-related event.

15 (8) In payment for anything of value or for
16 reimbursement of any expenditure for which any person has
17 been reimbursed by the State or any person. For purposes of
18 this item (8), a per diem allowance is not a reimbursement.

19 (9) For the purchase of or installment payment for a
20 motor vehicle unless the political committee can
21 demonstrate that purchase of a motor vehicle is more
22 cost-effective than leasing a motor vehicle as permitted
23 under this item (9). A political committee may lease or
24 purchase and insure, maintain, and repair a motor vehicle
25 if the vehicle will be used primarily for campaign purposes
26 or for the performance of governmental duties. A committee

1 shall not make expenditures for use of the vehicle for
2 non-campaign or non-governmental purposes. Persons using
3 vehicles not purchased or leased by a political committee
4 may be reimbursed for actual mileage for the use of the
5 vehicle for campaign purposes or for the performance of
6 governmental duties. The mileage reimbursements shall be
7 made at a rate not to exceed the standard mileage rate
8 method for computation of business expenses under the
9 Internal Revenue Code.

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

14 (11) For payments to a public official or candidate or
15 his or her family member unless for compensation for
16 services actually rendered by that person. The provisions
17 of this item (11) do not apply to expenditures by a
18 political committee in an aggregate amount not exceeding
19 the amount of funds reported to and certified by the State
20 Board or county clerk as available as of June 30, 1998, in
21 the semi-annual report of contributions and expenditures
22 filed by the political committee for the period concluding
23 June 30, 1998.

24 (b) The Board shall have the authority to investigate, upon
25 receipt of a verified complaint, violations of the provisions
26 of this Section. The Board may levy a fine on any person who

1 knowingly makes expenditures in violation of this Section and
2 on any person who knowingly makes a malicious and false
3 accusation of a violation of this Section. The Board may act
4 under this subsection only upon the affirmative vote of at
5 least 5 of its members. The fine shall not exceed \$500 for each
6 expenditure of \$500 or less and shall not exceed the amount of
7 the expenditure plus \$500 for each expenditure greater than
8 \$500. The Board shall also have the authority to render rulings
9 and issue opinions relating to compliance with this Section.

10 (c) Nothing in this Section prohibits the expenditure of
11 funds of (i) a political committee controlled by an
12 officeholder or by a candidate or (ii) an organization subject
13 to Section 9-7.5 to defray the customary and reasonable
14 expenses of an officeholder in connection with the performance
15 of governmental and public service functions.

16 (d) Nothing in this Section prohibits the funds of a
17 political committee, or an organization subject to Section
18 9-7.5, which is controlled by a person convicted of a violation
19 of any of the offenses listed in subsection (a) of Section 10
20 of the Public Corruption Profit Forfeiture Act from being
21 forfeited to the State under Section 15 of the Public
22 Corruption Profit Forfeiture Act.

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.