



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1416

by Rep. John D. Cavaletto

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.

LRB099 05673 RLC 25716 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 those 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; forfeiture.

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 2012:

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 State shall have the burden of establishing, by a preponderance
10 of the evidence, that property or property interests are
11 subject to forfeiture under this Act. There is a rebuttable
12 presumption at the hearing that any property or property
13 interest of a person charged by information or indictment with
14 a violation of any of the offenses listed in clauses (1)
15 through (3) of subsection (a) of this Section or who is
16 convicted of a violation of any of the offenses listed in
17 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) the property or property interest was acquired by
21 the person during the period of the violation of any of the
22 offenses listed in clauses (1) through (3) of subsection
23 (a) of this Section or within a reasonable time after that
24 period; and

25 (2) there was no likely source for the 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 under this Act, in which any
4 restraining order, injunction or prohibition or any other
5 action in connection with any property or property interest
6 subject to forfeiture under this Act is sought, the circuit
7 court which shall preside over the trial of the person or
8 persons charged with any of the offenses listed in clauses (1)
9 through (3) of subsection (a) of this Section shall first
10 determine whether there is probable cause to believe that the
11 person or persons charged have committed a violation of any of
12 the offenses listed in clauses (1) through (3) of subsection
13 (a) of this Section and whether the property or property
14 interest is subject to forfeiture under this Act.

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

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

7 Upon that finding, the circuit court shall enter the
8 restraining order, injunction or prohibition, or shall take any
9 other action in connection with the property or property
10 interest subject to forfeiture under this Act, as is necessary
11 to insure that the property is not removed from the
12 jurisdiction of the court, concealed, destroyed, or otherwise
13 disposed of by the owner of that property or property interest
14 prior to a forfeiture hearing under subsection (b) of this
15 Section. The Attorney General or State's Attorney shall file a
16 certified copy of the restraining order, injunction, or other
17 prohibition with the recorder of each county where any property
18 of the defendant subject to forfeiture may be located. An
19 injunction, restraining order, or other prohibition issued
20 under this Act shall not affect the rights of any bona fide
21 purchaser, mortgagee, judgment creditor, or other lien holder
22 arising prior to the date of the filing.

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

1 injunction, or prohibition or other action. The court may
2 release the property to the defendant for good cause shown and
3 within the sound discretion of the court.

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

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

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

1 forfeited or seized, in accordance with subsection (g).

2 (g) All moneys and the sale proceeds of all other property
3 forfeited and seized under this Act shall be distributed as
4 follows:

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

19 (h) All moneys deposited under this Act in the State Asset
20 Forfeiture Fund are appropriated, on a continuing basis, to the
21 Department of State Police to be used in the manner set forth
22 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 under this Section
9 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 the 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 the fine, may petition the
19 court for an extension of the time for payment or modification
20 of the method of payment.

21 (2) The court may grant a petition made under this
22 subsection (e) 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 2,000,000, 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 2,000,000, 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 the 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 under subsection (a) shall be made available to that
10 law enforcement agency as expendable receipts for use in the
11 enforcement of laws regulating public corruption and other
12 laws. The proceeds of fines awarded to the State treasury shall
13 be deposited in the State Asset Forfeiture Fund. Moneys from
14 this Fund may be used by the Department of State Police in the
15 enforcement of laws regulating public corruption and other
16 laws; and all other moneys 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 or herself of any interest, direct or
23 indirect, in any enterprise; imposing reasonable restrictions
24 on the future activities or investment of any person,
25 including, but not limited to, prohibiting any person from

1 engaging in the same type of endeavor as the enterprise engaged
2 in, the activities of which affect business in this State; or
3 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 under this Section, the court shall proceed as soon as
8 practicable to the hearing and determination of the action.
9 Pending that determination, the court may at any time enter any
10 temporary restraining orders, preliminary or permanent
11 injunctions, or prohibitions, or take any other actions
12 including the acceptance of satisfactory performance bonds by a
13 defendant, as it shall deem proper.

14 (c) Any person directly injured in his or her business,
15 person, or property by reason of a violation of this Act may
16 sue the violator 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 of any county in which the person resides, is found, has
2 an agent, transacts his or her affairs, or in which property
3 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. The provisions of this Act are
10 severable under Section 1.31 of the Statute on Statutes.

11 Section 900. The Election Code is amended by changing
12 Section 9-8.10 as follows:

13 (10 ILCS 5/9-8.10)

14 Sec. 9-8.10. Use of political committee and other reporting
15 organization funds.

16 (a) A political committee shall not make expenditures:

17 (1) In violation of any law of the United States or of
18 this State.

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

22 (3) For satisfaction or repayment of any debts other

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

16 (4) For the satisfaction or repayment of any debts or
17 for the payment of any expenses relating to a personal
18 residence. Campaign funds may not be used as collateral for
19 home mortgages.

20 (5) For clothing or personal laundry expenses, except
21 clothing items rented by the public official or candidate
22 for his or her own use exclusively for a specific
23 campaign-related event, provided that committees may
24 purchase costumes, novelty items, or other accessories
25 worn primarily to advertise the candidacy.

26 (6) For the travel expenses of any person unless the

1 travel is necessary for fulfillment of political,
2 governmental, or public policy duties, activities, or
3 purposes.

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

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

14 (9) For the purchase of or installment payment for a
15 motor vehicle unless the political committee can
16 demonstrate that purchase of a motor vehicle is more
17 cost-effective than leasing a motor vehicle as permitted
18 under this item (9). A political committee may lease or
19 purchase and insure, maintain, and repair a motor vehicle
20 if the vehicle will be used primarily for campaign purposes
21 or for the performance of governmental duties. A committee
22 shall not make expenditures for use of the vehicle for
23 non-campaign or non-governmental purposes. Persons using
24 vehicles not purchased or leased by a political committee
25 may be reimbursed for actual mileage for the use of the
26 vehicle for campaign purposes or for the performance of

1 governmental duties. The mileage reimbursements shall be
2 made at a rate not to exceed the standard mileage rate
3 method for computation of business expenses under the
4 Internal Revenue Code.

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

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

19 (b) The Board shall have the authority to investigate, upon
20 receipt of a verified complaint, violations of the provisions
21 of this Section. The Board may levy a fine on any person who
22 knowingly makes expenditures in violation of this Section and
23 on any person who knowingly makes a malicious and false
24 accusation of a violation of this Section. The Board may act
25 under this subsection only upon the affirmative vote of at
26 least 5 of its members. The fine shall not exceed \$500 for each

1 expenditure of \$500 or less and shall not exceed the amount of
2 the expenditure plus \$500 for each expenditure greater than
3 \$500. The Board shall also have the authority to render rulings
4 and issue opinions relating to compliance with this Section.

5 (c) Nothing in this Section prohibits the expenditure of
6 funds of a political committee controlled by an officeholder or
7 by a candidate to defray the customary and reasonable expenses
8 of an officeholder in connection with the performance of
9 governmental and public service functions.

10 (d) Nothing in this Section prohibits the funds of a
11 political committee which is controlled by a person convicted
12 of a violation of any of the offenses listed in subsection (a)
13 of Section 10 of the Public Corruption Profit Forfeiture Act
14 from being forfeited to the State under Section 15 of the
15 Public Corruption Profit Forfeiture Act.

16 (e) Nothing in this Section prohibits the funds of a
17 political committee, or an organization subject to Section
18 9-8.6 of this Code, which is controlled by a person convicted
19 of a violation of any of the offenses listed in subsection (a)
20 of Section 10 of the Public Corruption Profit Forfeiture Act
21 from being forfeited under Section 15 of the Public Corruption
22 Profit Forfeiture Act.

23 (Source: P.A. 96-1019, eff. 1-1-11.)