

ALAN M. ARAKAWA
Mayor



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Sandy Baz
Budget Director, County of Maui
200 South High Street
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL
Alan Arakawa 7/5/18
Mayor Date

For Transmittal to:

Honorable Alan Arakawa
Mayor, County of Maui

Honorable Michael White, Chair
and Members of Maui County Council
200 South High Street
Wailuku, HI 96793

Dear Director Baz, Mayor Arakawa, Chair White and Members:

SUBJECT: NOTIFICATOIN FOR EXPENDITURE OF FORFEITURE FUNDS

The Department of the Prosecuting Attorney has forfeiture funds available from the Criminal Forfeiture (320N) Account, pursuant to Section 712A-16(2)(b), HRS. These funds were obtained through the Department's enforcement efforts and must be used only for law enforcement purposes, including training and equipment, and not to supplant the law enforcement resources of the local agency.

We are informing you of our intent to use approximately \$40,000 from our Federal Forfeiture Fund Account toward our Employee Development Program to fund training and related expenses.

If you have any questions or require further information, please contact me at 270-7632.

Sincerely

John D. Kim
JOHN D. KIM,
Prosecuting Attorney

COUNTY COMMUNICATION NO. 18-266

CC: Mark Walker, Director of Finance

§712A-16 Disposition of property forfeited. (1) All property forfeited to the State under this chapter shall be transferred to the attorney general who:

- (a) May transfer property, other than currency, which shall be distributed in accordance with subsection (2) to any local or state government entity, municipality, or law enforcement agency within the State;
- (b) May sell forfeited property to the public by public sale; provided that for leasehold real property:
 - (i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest.
 - (ii) If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the leasehold interest and any improvements by public sale.
 - (iii) Any dispute between the attorney general and the holder of the immediate reversionary interest as to the fair market value of the leasehold interest and improvements shall be settled by arbitration pursuant to chapter 658A;
- (c) May sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance or any untaxed cigarettes in violation of chapter 245;
- (d) May compromise and pay valid claims against property forfeited pursuant to this chapter; or
- (e) May make any other disposition of forfeited property authorized by law.

(2) All forfeited property and the sale proceeds thereof, up to a maximum of three million dollars per year, not previously transferred pursuant to [subsection] (1)(a) of this section, shall, after payment of expenses of administration and sale, be distributed as follows:

- (a) One quarter shall be distributed to the unit or units of state or local government [whose] officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture;

- (b) One quarter shall be distributed to the prosecuting attorney who instituted the action producing the forfeiture; and
- (c) One half shall be deposited into the criminal forfeiture fund established by this chapter.

(3) Property and money distributed to units of state and local government shall be used for law enforcement purposes, and shall complement but not supplant the funds regularly appropriated for such purposes.

(4) *[Repeal and reenactment on June 30, 2022. L 2016, c 161, §7 (3).]* There is established in the department of the attorney general a revolving fund to be known as the criminal forfeiture fund, hereinafter referred to as the "fund" in which shall be deposited one-half of the proceeds of a forfeiture and any penalties paid pursuant to section 712A-10(6). All moneys in the fund shall be expended by the attorney general and are appropriated for the following purposes:

- (a) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property and such contract services and payments to reimburse any federal, state, or county agency for any expenditures made to perform the foregoing functions;
- (b) The payment of awards for information or assistance leading to a civil or criminal proceeding;
- (c) The payment of supplemental sums to state and county agencies for law enforcement purposes;
- (d) The payment of expenses arising in connection with programs for training and education of law enforcement officers;
- (e) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general; and
- (f) The payment of expenses arising in connection with the law enforcement officer independent review board in the department of the attorney general.

(5) The attorney general may, without regard to the requirements of chapter 91, promulgate rules and regulations concerning the disposition of property, the use of the fund, and compromising and paying valid claims against property forfeited pursuant to this chapter.

(6) Not less than twenty days prior to the convening of each regular session, the attorney general shall provide to the legislature a report on the use of the Hawaii omnibus criminal forfeiture act during the fiscal year preceding the legislative session. The report shall include:

- (a) The total amount and type of property seized by law enforcement agencies;
- (b) The total number of administrative and judicial actions filed by prosecuting attorneys and the disposition thereof;
- (c) The total number of claims or petitions for remission or mitigation filed in administrative actions and the dispositions thereof;

- (d) The total amount and type of property forfeited and the sale proceeds thereof;
- (e) The total amount and type of property distributed to units of state and local government;
- (f) The amount of money deposited into the criminal forfeiture fund; and
- (g) The amount of money expended by the attorney general from the criminal forfeiture fund under subsection (5) and the reason for the expenditures. [L 1988, c 260, pt of §1, §7; am L 1990, c 197, §1, §2; am L 1991, c 166, §8; am L 1992, c 112, §2; am L 1993, c 196, §1; am L 1996, c 104, §6; am L 2000, c 249, §§12, 20(2); am L 2001, c 265, §4; am L 2002, c 16, §31 as superseded by c 94, §3; am L 2003, c 63, §2; am L 2016, c 161, §2]

Note

Transfer of certain interest earnings to general fund until June 30, 2015. L 2009, c 79, §30(a)(41).

COMMENTARY ON §712A-16

Act 197, Session Laws 1990, amended this section to require the attorney general to prepare a report to the legislature on the use of the Hawaii omnibus criminal forfeiture act. The legislature felt it was important to be kept well-informed about the use of this powerful tool. Senate Standing Committee Report No. 2900.

Act 112, Session Laws 1992, amended this section to provide that the holder of the immediate reversionary interest in leasehold real property forfeited to the State under chapter 712A is to be offered the first opportunity to acquire the remaining leasehold interest and any improvements on the property built or paid for by the lessee. The legislature felt that this amendment adequately protects the rights of innocent property owners and other interest holders while facilitating the disposition of forfeited leasehold properties. Senate Standing Committee Report No. 2482.

Act 249, Session Laws 2000, amended this section by adding to the list of property which the attorney general is authorized to sell or destroy under subsection (1)(c) any untaxed cigarettes forfeited to the State and transferred to the attorney general for violating the cigarette tax and tobacco tax law under chapter 245.

Act 94, Session Laws 2002, by making the cigarette tax stamp law permanent, amended this and other sections. The legislature sought to ensure compliance with and enforcement of the cigarette tax stamp laws. House Standing Committee Report No. 502-02.

Act 63, Session Laws 2003, amended this section by providing that the drug nuisance abatement unit expenses be paid out of the criminal forfeiture fund in the department of the attorney general. Conference Committee Report No. 31.

Act 161, Session Laws 2016, amended this section to authorize the expenditure of moneys in the criminal forfeiture fund for the payment of expenses arising in connection with the law enforcement officer

independent review board established by Act 161. Senate Standing
Committee Report No. 2471.

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