

HOUSE BILL REPORT

HB 2724

As Reported By House Committee On: Appropriations

Title: An act relating to legislative oversight of moneys received from fines, penalties, forfeitures, settlements, court orders, or other enforcement actions.

Brief Description: Requiring legislative oversight of moneys received from enforcement actions.

Sponsors: Representatives Boldt, Mielke, Pennington, Carrell, Mulliken, Thompson, Bush, Cairnes, Reams and Lambert.

Brief History:

Committee Activity:

Appropriations: 2/3/98, 2/5/98 [DPS].

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Linville; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

Staff: Kristen Reiber (786-7148).

Background: Regulatory and enforcement activities of state agencies may result in imposition of fines or payments of other penalties or assessments. If a statute authorizes a state agency to impose administratively a fine or penalty, the statute usually specifies whether the moneys received are to be deposited in the state general fund or into a dedicated fund.

Agencies may initiate regulatory or enforcement actions through court proceedings or through administrative processes. In a court proceeding, the outcome is either determined by the court or approved by the court under a consent decree. If the agency has not filed a court action, it may resolve a regulatory action through a settlement with the other party. A settlement might result in the payment of a fine to the agency, or it

might result in other sorts of payments by the party that is the subject of the regulatory action. These payments might take the form of damages, reimbursements to injured parties, or payment for other remedial actions. If the payment is characterized as a payment other than a fine or penalty, the payment may in some instances be expended by the agency without a legislative appropriation, either through a nonappropriated account or through the unanticipated receipts process.

Article VIII, section 4 of the state constitution prohibits moneys in the state treasury from being spent without an appropriation, which must be in the form of legislation. Some accounts are created "in the custody of the state treasurer" and do not require a legislative appropriation for expenditures. The expenditure of moneys from appropriated accounts and many nonappropriated accounts is supervised by the Office of Financial Management (OFM) through the allotment process. Under this process, OFM establishes a financial plan and monitors expenditures quarterly.

The unanticipated receipts process permits state agencies to spend, without an appropriation, moneys received from the federal government or from private sources. If an agency receives moneys from such sources, and the moneys were not anticipated in the budget and are designated to be spent for a specific purpose, then the agency may submit an allotment amendment request to the Governor. Before OFM approves the expenditure, it must notify the legislative fiscal committees and the Joint Legislative Audit and Review Committee. The typical unanticipated receipt is a one-time occurrence that does not permanently increase agency staffing, activity, or funding levels.

Another way in which state agencies may make expenditures without an appropriation is by treating the moneys as a recovery of expenses. Language typically included in the operating budget act permits agencies to expend these recovered amounts as if they were part of the original appropriation.

Summary of Substitute Bill: An agency is prohibited from expending moneys received from fines, penalties, forfeitures, settlements, court orders, or other enforcement actions unless the agency first receives an appropriation authorizing the expenditure. The appropriation requirement applies only to moneys received for the state or state agencies.

The attorney general is authorized to initiate a civil action to prevent the violation of this requirement, and penalties and damages may be assessed.

Moneys received from fines, forfeitures, settlements, court orders, and other enforcement actions may not be expended through the unanticipated receipts process.

The authorizing statutes of a variety of non-appropriated accounts are changed. Moneys in those accounts that derive from fines, penalties, forfeitures, and other enforcement actions may not be expended without a legislative appropriation.

Substitute Bill Compared to Original Bill: The substitute bill makes the appropriation requirement applicable only to moneys received for the state. An effective date, severability clause, and savings clause are added.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on July 1, 1999.

Testimony For: This bill brings legislative oversight to agencies' expenditures.

Testimony Against: (on original bill) Requiring an appropriation in all instances would impair the attorney general's ability to secure the remedy of restitution in consumer protection and antitrust cases.

Testified: Representative Boldt, prime sponsor; and David Walsh, Office of the Attorney General (with concerns).