

HOUSE BILL REPORT

SHB 2724

As Passed Legislature

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: By House Committee on Appropriations (originally sponsored by Representatives Boldt, Mielke, Pennington, Carrell, Mulliken, Thompson, Bush, Cairnes, Reams and Lambert).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 2/13/98, 98-0.

Senate Amended.

House Concurred.

Passed Legislature.

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. 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 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. 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. There are three ways that an agency may make expenditures without an appropriation: through a nonappropriated account, through the unanticipated receipts process, or as a recovery of expenditures.

An appropriation is legislation that authorizes a state agency to incur a maximum expenditure. Article VIII, section 4 of the state constitution prohibits moneys in the state treasury from being spent without an appropriation. Some accounts, however, 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, the 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 the 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 Bill: State agencies are prohibited from expending moneys without an appropriation where the moneys are received in an administrative or judicial regulatory or civil enforcement action. The appropriation requirement does not apply to: nonappropriated statutory accounts that are not referenced in the bill; trust funds established outside the treasury for certain types of environmental remediation; "cy pres" distributions to injured parties other than state agencies; statutory funds of the Department of Labor & Industries; fees or enforcement actions to collect fees; and recoveries by the Department of Social and Health Services for services, benefits, vendor payments, or amounts collected by the Child Support Division.

Moneys to which this appropriation requirement applies may not be expended through the unanticipated receipts process, nor may they be expended as recoveries of amounts expended pursuant to an appropriation.

The authorizing statutes of a variety of non-appropriated funds are changed. To the extent that moneys in these accounts derive from administrative or judicial regulatory or civil enforcement actions, expenditure of those moneys requires a legislative appropriation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: 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).