

SENATE BILL REPORT

SB 6266

As Reported by Senate Committee On:
Law & Justice, January 30, 2020

Title: An act relating to seizure and forfeiture reporting.

Brief Description: Concerning seizure and forfeiture reporting.

Sponsors: Senators Padden, Hasegawa, Das and Holy.

Brief History:

Committee Activity: Law & Justice: 1/27/20, 1/30/20 [DPS].

Brief Summary of First Substitute Bill

- Requires seizing agencies to keep detailed records about property seized and forfeited under state law and any agreement with any federal agency for each forfeiture.
- Establishes requirements for agencies to submit quarterly reports to the state treasurer and to publish records on a public website.
- Requires the state treasurer to provide an annual report to the Legislature providing aggregate data from reports it receives from seizing agencies.
- Requires the seizing agency to report records of expenditures from the sum of the net proceeds of all forfeitures to the state treasurer by March 1st of each year.
- Requires the state auditor to conduct annual audits of a seizing agency that fails to comply with reporting requirements.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6266 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Tim Ford (786-7423)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The civil forfeiture provisions in drug cases provide that no property right exists in the controlled substances themselves, in the equipment or materials used to manufacture the substances, or in the money and property intended to be used as payment or proceeds traceable to the sale or exchange of controlled substances. Conveyances used or intended for use to facilitate the sale, delivery, or receipt of controlled substances are subject to forfeiture, unless used without the knowledge or consent of the true owner.

Real property being used with the knowledge of the owner for manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance, or which has been acquired in whole or in part with proceeds, is subject to forfeiture. If the forfeited real property is encumbered by a security interest, it is subject to the interest of the secured party if the secured party had neither the knowledge nor the consent of the prohibited act. The community property interest in real property may not be forfeited if the person did not participate in the violation.

Real or personal property subject to forfeiture may be seized by any State Board of Pharmacy inspector or law enforcement officer upon process. Real property may not be transferred or conveyed by the law enforcement agency until 90 days after the seizure, or until a judgment of forfeiture is entered. If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within 45 days of the seizure in the case of personal property and 90 days in the case of real property, the property is deemed forfeited. If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within the time period, the person or persons is afforded an opportunity to be heard as to the claim or right.

If property is forfeited, the board or seizing law enforcement agency may (1) retain it for official use; (2) sell that which is not required to be destroyed by law and not harmful to the public; (3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition; or (4) forward it to the federal Drug Enforcement Administration for disposition. A report including a copy of the records of forfeited property is filed with the state treasurer each calendar quarter.

By January 31st of each year, each seizing agency remits to the state treasurer an amount equal to 10 percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted is deposited in the state general fund. Forfeited property and net proceeds not required to be paid to the state treasurer are retained by the seizing law enforcement agency exclusively for expanding and improving controlled substances related law enforcement activity.

Summary of Bill (First Substitute): The state treasurer must provide an annual report to the Legislature providing aggregate data from the reports it receives from seizing agencies. The state auditor must conduct an annual audit of a seizing agency that fails to comply with the reporting requirements in this section until compliance is obtained.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- The state treasurer must provide an annual report to the Legislature providing aggregate data from the reports it receives from seizing agencies.
- The state auditor must conduct an annual audit of a seizing agency that fails to comply with the reporting requirements in this section until compliance is obtained.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: For a long time in the legislative process we have talked about civil forfeiture prior to a conviction. There is the possibility for abuse. We need to get an idea of where we are and this is a first step. Other states do not allow civil forfeiture without a conviction. We just want to get the data. There needs to be comprehensive reporting requirements. In Washington the aggregate amounts is reported but we need details. Due process rights need to be protected by detailed reporting. An annual statewide report to the Legislature should be required from the state treasurer. There should be an enforcement mechanism for agencies that fail to report. Current laws leave us in the dark as to how forfeited property is used. We do not even know if a person is being charged with a crime after seizure.

CON: The data is there and we have nothing to hide in our use of civil forfeiture. The only difference between this bill and current law is the burden of putting it together. The public has an ability to get this information under the state public records law. Putting this data together and publish it would cost each agency a 1/2 FTE. Some of the information required to be collected and reported would not be something that a seizing agency might maintain. The seizing agency can't provide information it doesn't have or maintain.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Angela Erickson, Director of Strategic Research, Pacific Legal Foundation; Jennifer McDonald, Senior Research Analyst, Institute of Justice.

CON: Michele Walker, Prosecuting Attorney, City of Kent; James McMahan, Washington Association Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.