

BILL ANALYSIS

C.S.H.B. 1849
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires law enforcement agencies and state attorneys' offices to complete an annual audit of asset forfeiture proceeds and property that are to be used solely for law enforcement purposes or official purposes of the attorneys' offices. While the audit is meant to provide the public a way to determine how asset forfeiture dollars are spent by those entities, current law is silent as to which purposes and expenses are included as authorized uses of forfeited proceeds and property. As a result, law enforcement agencies, state attorneys' offices, and the general public do not have specific guidance as to the permissible use of these funds. In an effort to clarify the disposition and reporting process of forfeited property and to make the process more efficient for all parties involved, C.S.H.B. 1849 adds provisions relating to the expenditure of proceeds or property received from contraband forfeiture.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1849 amends the Code of Criminal Procedure to establish that an expenditure of proceeds or property received from the forfeiture of contraband is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of Texas laws, including an expenditure made for employee salary and overtime; equipment; supplies; investigative and training-related travel expenses; conferences and training expenses; investigative costs; crime prevention and treatment programs; facility costs; witness-related costs; and audit costs and fees. The bill establishes that an expenditure of proceeds or property received from the forfeiture of contraband is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of Texas laws, including an expenditure made for employee salary and overtime; equipment; supplies; prosecution and training-related travel expenses; conferences and training expenses; investigative costs; crime prevention and treatment programs; facility costs; legal fees; and state bar and legal association dues.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1849 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 59.06, Code of Criminal Procedure, is amended by amending Subsections (c), (c-1), and (g) and adding Subsections (d-3) and (d-4) to read as follows:

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes~~[, such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies, and items used by officers in direct law enforcement duties];~~

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes~~[, such as training, essential~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 59.06, Code of Criminal Procedure, is amended by amending Subsections (c) and (c-1) and adding Subsections (d-3) and (d-4) to read as follows:

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes~~[, such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies, and items used by officers in direct law enforcement duties];~~

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes~~[, such as training, essential~~

~~equipment, and operating expenses]. Any expenditures of the proceeds are subject to the audit provisions established under this article.~~

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

- (1) salary and overtime of employees;
- (2) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;
- (3) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;
- (4) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
- (5) conferences and training expenses, including fees and materials;
- (6) investigative costs, including payments to informants and lab expenses;
- (7) crime prevention and treatment programs;
- (8) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
- (9) witness-related costs, including travel and security; and
- (10) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney representing the state that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

- (1) salary and overtime of employees;
- (2) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

~~equipment, and operating expenses]. Any expenditures of the proceeds are subject to the audit provisions established under this article.~~

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

- (1) salary and overtime of employees;
- (2) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;
- (3) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;
- (4) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
- (5) conferences and training expenses, including fees and materials;
- (6) investigative costs, including payments to informants and lab expenses;
- (7) crime prevention and treatment programs;
- (8) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
- (9) witness-related costs, including travel and security; and
- (10) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

- (1) salary and overtime of employees;
- (2) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

(3) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;
(4) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
(5) conferences and training expenses, including fees and materials;
(6) investigative costs, including payments to informants and lab expenses;
(7) crime prevention and treatment programs;
(8) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities; and
(9) legal fees, including court costs, witness fees, and audit costs and fees.

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the auditor of the law enforcement agency, the political subdivision of the state, or the attorney representing the state ~~[commissioners court or governing body of a municipality]~~, as appropriate, or an accounting professional under contract for the purpose of complying with this subdivision. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The attorney general may adopt a secure process for electronically completing, verifying, and submitting an audit report under this subdivision. The secure process adopted under this subdivision may require digital signatures or unique login protocols. The audit must be completed on an audit reporting [a] form provided by the attorney general and available on the attorney general's Internet website or completed electronically according to the protocols adopted by the attorney general and must include a detailed list ~~[report]~~ and explanation of all

(3) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;
(4) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
(5) conferences and training expenses, including fees and materials;
(6) investigative costs, including payments to informants and lab expenses;
(7) crime prevention and treatment programs;
(8) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
(9) legal fees, including court costs, witness fees and related costs, including travel and security, audit costs, and professional fees; and
(10) state bar and legal association dues.

No equivalent provision.

expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. The completed audit report must be certified by the auditor or accounting professional and the head of the law enforcement agency, political subdivision, or attorney representing the state in a manner specified by the attorney general to show that the information provided is correct. Certified copies of the audit report shall be delivered or electronically submitted by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit report is not delivered or electronically submitted to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver or electronically submit a copy of the audit report after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering or electronically submitting the copy of the audit report within the period required by Subdivision (1) or fails to deliver or electronically submit a copy of an audit report within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward or electronically submit a copy of the audit report to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

SECTION 2. The changes in law made by this Act in adding Articles 59.06(d-3) and

SECTION 2. Substantially the same as introduced version.

(d-4), Code of Criminal Procedure, apply to the disposition or use, on or after the effective date of this Act, of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective date of this Act.

SECTION 3. The changes in law made by this Act in amending Article 59.06(g), Code of Criminal Procedure, apply to any audit performed under that subsection on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2013.

No equivalent provision.

SECTION 3. Same as introduced version.