

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 17, 2023

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2992 by Harrison (Relating to the tracking, reporting, and disposition of proceeds and property from asset forfeiture proceedings under the Code of Criminal Procedure.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2992, As Introduced : a negative impact of (\$3,842,837) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	(\$3,758,966)
2025	(\$83,871)
2026	(\$83,871)
2027	(\$83,871)
2028	(\$83,871)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Interagency Contracts 777	Probable Revenue Gain from Interagency Contracts 777	Change in Number of State Employees from FY 2023
2024	(\$3,758,966)	(\$338,000)	\$338,000	3.2
2025	(\$83,871)	(\$338,000)	\$338,000	3.2
2026	(\$83,871)	(\$338,000)	\$338,000	3.2
2027	(\$83,871)	(\$338,000)	\$338,000	3.2
2028	(\$83,871)	(\$338,000)	\$338,000	3.2

Fiscal Analysis

The bill would amend the process for disposition of forfeited property in the Code of Criminal Procedure. The attorney representing the state or the head of a law enforcement agency, as applicable, may use any portion of the gross amount credited to the attorney's or agency's special fund to pay the fee charged by the Office of the Attorney General (OAG) or any cost incurred by the attorney representing the state or the law enforcement agency to compile information or submit reports to the OAG. If the attorney representing the state does not comply with certain provisions of the law, the attorney may not disburse funds to the agency and may not expend any proceeds or use any property received under this chapter until required reports are submitted.

The bill would provide that on request from a member of the legislature, the state auditor shall perform an audit and the state auditor is not required to perform more than one audit a year. Not later than the 90th day after the date of completion, the state auditor shall submit a copy of the audit to the OAG. The OAG shall promptly publish the audit on the publicly accessible website.

The bill would require the OAG to establish and maintain a case tracking system to collect and organize data regarding property seized or forfeitures under the Code of Criminal Procedure or under an agreement with the federal government. The bill requires all law enforcement agencies and attorneys representing the state to provide detailed case information to the OAG's case tracking system.

The bill would require the OAG to adopt rules regarding how frequently law enforcement agencies and attorneys representing the state must submit information to the case tracking system. If the agencies or attorneys have activity to report, they are still responsible for submitting a report stating that no property was seized.

The bill requires the OAG to create a separate report regarding cases handled under agreements with the federal government after each fiscal year. If a law enforcement agency or attorney representing the state fails to submit a report, under this provision, the entity may be subject to a civil penalty. A civil penalty for each violation may be in an amount equal to \$500 or 25 percent of the forfeiture proceeds received by the law enforcement agency or attorney representing the state, whichever is greater; or in a reasonable amount determined by the OAG. Sovereign immunity of this state and governmental immunity of a political subdivision to suit and from liability is waived to the extent of liability created by violating this reporting requirement.

The bill would authorize the OAG to charge a reasonable fee to a law enforcement agency or attorney representing the state that submits information to the case tracking system in order to defray costs associated with implementing the system.

The bill would require the OAG to submit a report to the Governor, Lieutenant Governor, and Speaker of the House that summarizes the activity reported to the OAG under the tracking system and make the report publicly available on the OAG's website. All information submitted to the OAG or published, other than specified information, are public information and subject to disclosure.

Methodology

According to the OAG, due to the complexity and voluminous nature of the information required by the bill, it is anticipated that, in addition to the significant amount of time that would be required to plan and implement the reporting system, a significant amount of time would be allocated to handling the customer service duties the system will require which could not be absorbed within current staffing. It is anticipated that the OAG would need one additional Program Specialist II FTE to address the additional workload. The total estimated FTE-related costs for the 2024-25 biennium are \$165,036.

Additionally, the OAG indicates that the proposed reporting requirement contained within the bill would have a significant technology impact. The bill would necessitate the creation of a new Asset Forfeiture System to serve the 3,000 law enforcement agencies and attorneys representing the state that must report and account for the seizure, forfeiture, receipts, and specific expenditure of all the proceeds and property in the audit.

The revenue implications from the fees that the OAG would be able to charge a law enforcement agency or attorney representing the state that submits relevant asset forfeiture information cannot be determined at this time. Revenue implications from civil penalties created by the bill also cannot be estimated.

The State Auditor's Office (SAO) anticipates that they will be requested to perform an audit of an asset forfeiture program each fiscal year. According to SAO, it is anticipated that these audits would require, on average, 3,500 hours to complete. This analysis assumes that the SAO would be asked to audit local entities. At a \$95 per hour billing rate, it is anticipated that the total SAO-related cost for the 2024-25 biennium would be \$676,000. It is also anticipated that two additional Auditor Exempt FTEs would be needed to fulfill the provisions of the bill. Under current law, the law enforcement agency or attorney representing the state responsible for the asset forfeiture program audited would be required to reimburse the SAO for costs incurred in performing the audit. As a result, the cost to the SAO to fulfill the required audit would be offset by revenue

gain from the reimbursement. For the purposes of this analysis, the revenue gain is shown as Interagency Contract receipts, assuming the reimbursement would be made by a state agency. However, reimbursement may be classified as an Appropriated Receipt if received from a non-state entity.

Technology

The technology impact includes one-time costs of \$3,670,475 in fiscal year 2024, and a recurring cost in each fiscal year 2024-2028 of \$3,663. One-time costs include system development, project management costs, standard laptop, software, printer, and telecom/voicemail.

Local Government Impact

It is anticipated that the impact on local governments would be significant due to the voluminous nature of the information required of these offices for forfeiture cash handled.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 696 Department of Criminal Justice, 802 Parks and Wildlife Department

LBB Staff: JMc, DDeI, LCO, HGR, NV