

BILL ANALYSIS

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S.B. 878
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Article 59.06 of the Texas Code of Criminal Procedure establishes the procedures for the disposition of forfeited property by either the attorney representing the state or the law enforcement agency. Forfeited property is contraband used in the commission of a crime that is subject to seizure and forfeiture. The disposition of forfeited assets is determined at a forfeiture hearing.

The purpose for which proceeds from forfeited assets may be used is limited to an "official purpose of the office" or a "law enforcement purpose." As currently written, however, the statute is silent as to which purposes and expenses those terms do, and do not, include. The result is that neither law enforcement, state attorneys' offices, nor the general public have any guidance as to the permissible use of these funds.

S.B. 878 will help provide clarity in the disposition and reporting process of forfeited property. This bill provides law enforcement, state attorneys, and the public a clear directive as to what is and is not an authorized use of asset forfeiture dollars.

Currently, Article 59.06(g)(1) of the Code of Criminal Procedure requires that the commissioners court or the governing body of a municipality annually audit the law enforcement agency or office of the attorney representing the state for proceeds or property seized in an asset forfeiture. The purpose of the audit is to provide the public, in the spirit of open government and transparency, with a means of knowing how asset forfeiture dollars are spent. S.B. 878 requires the auditor or other accounting professional of the law enforcement agency, attorney representing the state, or political subdivision of the state, as appropriate, to conduct the audit. This change assigns the responsibility to a more appropriate party, as the commissioners courts and municipalities have experienced technical and practical difficulties in performing the audit.

The Office of the Attorney General provides the form that law enforcement agencies and state attorneys' offices use to complete the annual audit of asset forfeiture proceeds and property. S.B. 878 also allows for the publication of the audit form on the agency website, and authorizes digital submission procedures for the audit forms. This is a modernization change that will make the reporting process more efficient.

As proposed, S.B. 878 amends current law relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

- (c) Deletes existing text enumerating examples of uses that qualify as uses for law enforcement purposes in regard to disposition of forfeited assets.

(c-1) Requires proceeds transferred under this subsection to be used by the special rangers solely for law enforcement purposes, such as training, essential equipment, and operating expenses.

(d-3) Provides that, 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) Provides that, 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;
- (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) Requires all law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter to 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, rather than annually by the commissioners court or governing body of a municipality, as appropriate, or by an accounting professional under contract for the purpose of complying with this subdivision. Authorizes the attorney general to adopt a secure process for electronically completing, verifying, and submitting an audit report under this subdivision. Authorizes the secure process adopted under this subdivision to require digital signatures or unique login protocols. Requires that the audit be completed on an audit reporting 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 requires it to include a detailed list, rather than report, and explanation on all expenditures, including salaries and overtime pay, officer training, investigative equipment and other items. Requires the completed audit report to 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. Requires that certified copies of the audit report 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) Requires the attorney general, 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 to notify the law enforcement agency or the attorney representing the state of that fact. Authorizes the attorney general, on a showing of good cause, to 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. Requires the attorney general, 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, to notify the comptroller of that fact.

(3) Requires the comptroller, at the conclusion of the audit, to forward or electronically submit a copy of the audit report to the attorney general.

SECTION 2. Provides that the changes in law made by this Act in adding Articles 59.06(d-3) and (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 (Forfeiture of Contraband), 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. Makes application of Article 59.06(g), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2013.