

SB 468

Department of Legislative Services

Maryland General Assembly

2014 Session

FISCAL AND POLICY NOTE

Senate Bill 468

(Senator Shank, *et al.*)

Judicial Proceedings

Criminal Procedure - Seizure and Forfeiture - Reporting

This bill establishes annual reporting requirements for each law enforcement agency in the State, regarding each seizure and forfeiture completed by the agency under State and federal forfeiture law.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$114,000 in FY 2015 to meet the bill's reporting requirements. Transportation Trust Fund (TTF) expenditures increase by at least \$103,600 in FY 2015. Future year estimates reflect annualization and inflation. Any revenue or expenditure impacts resulting from any fees assessed pursuant to the bill cannot be reliably quantified at this time. General/special fund revenues may be affected to the extent forfeiture proceeds are redirected to cover law enforcement agency costs under the bill.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | - | - | - | - | - |
| GF/SF Rev. | (-) | (-) | (-) | (-) | (-) |
| GF Expenditure | \$114,000 | \$144,500 | \$151,300 | \$158,400 | \$165,800 |
| SF Expenditure | \$103,600 | \$135,800 | \$142,000 | \$148,500 | \$155,300 |
| Net Effect | (\$217,600) | (\$280,300) | (\$293,300) | (\$306,800) | (\$321,000) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Costs incurred by local law enforcement agencies, including the costs to pay any fees imposed under the bill, may be offset from the proceeds of forfeitures. However, the extent to which local governments already use those proceeds for other purposes is unknown. Thus, local law enforcement agencies may be negatively affected.

This bill may impose a mandate on a unit of local government.

Small Business Effect: Minimal.

Analysis

Bill Summary: On an annual basis, each law enforcement agency in the State must report specified information about each individual seizure and forfeiture completed by the agency under State and federal forfeiture law. Among other things, the data that must be reported includes (1) the type of property seized; (2) the type of alleged crime associated with the seizure; (3) the venue for the action; (4) the market value of the property; (5) whether the procedure was a criminal forfeiture or civil forfeiture; (6) the outcome of related criminal action (including whether charges were brought, a plea bargain was reached, a conviction was obtained, or an acquittal was issued); (7) the total administrative and other expenses deducted as part of the forfeiture process; (8) the net amount received from the forfeiture; and (9) the disposition of the property following seizure (including whether the property was returned to the owner, destroyed, or sold or retained after forfeiture). The report must also contain data on expenditures of forfeiture funds by the law enforcement agency, including funds spent on several specified purposes.

The Maryland Statistical Analysis Center (MSAC) of the Governor's Office of Crime Control and Prevention (GOCCP) may require a law enforcement agency to provide relevant information not specified in the bill. Each law enforcement agency must file the required report with MSAC for the law enforcement agency and the corresponding prosecutor's office. The law enforcement agency must file separate reports for forfeitures completed under State forfeiture law and federal forfeiture law. A null report must be filed when a law enforcement agency did not engage in seizures or forfeitures during the reporting period.

MSAC must develop a standard form, a process, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies. MSAC must compile the submissions and issue an aggregate report of all forfeitures in the State. By March 1 of each year, MSAC must make available on MSAC's website the reports submitted by law enforcement agencies and MSAC's aggregate report.

GOCCP must submit the aggregate report to the Governor, the General Assembly, and each law enforcement agency before September 1 of each year. GOCCP may include, with MSAC's aggregate report, recommendations to the legislature to improve forfeiture statutes to better ensure that forfeiture proceedings are reported and handled in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, and taxpayers.

If a law enforcement agency fails to comply with the bill's reporting provisions, GOCCP must report the noncompliance to the Police Training Commission (PTC). PTC must contact the law enforcement agency and request that the agency comply with the required reporting provisions. If the law enforcement agency fails to comply with the required reporting provisions within 30 days after being contacted by PTC, GOCCP and PTC jointly must report the noncompliance to the Governor and the Legislative Policy Committee.

MSAC may recoup its costs by charging a fee to law enforcement agencies that engage in seizures or forfeitures during the reporting period. A law enforcement agency may use forfeiture proceeds to pay the cost of compiling and reporting data, including any fee imposed by MSAC.

Current Law/ Background: While several provisions of State law may provide for the seizure and forfeiture of property under certain circumstances, two examples include property that is subject to forfeiture if it is seized in connection with a violation of the controlled dangerous substances law or a violation of certain State provisions that relate to human trafficking.

A Schedule I controlled dangerous substance must be seized and summarily forfeited to the State if the substance is (1) possessed, transferred, sold, or offered for sale in violation of the law or (2) possessed by the State and its owner is not known. A plant may be seized and summarily forfeited if it is one from which a Schedule I or Schedule II substance may be derived and it (1) has been planted or cultivated in violation of the law; (2) has an unknown owner or cultivator; or (3) is a wild growth.

A complaint seeking forfeiture must contain:

- a description of the property seized;
- the date and place of the seizure;
- the name of the owner, if known;
- the name of the person in possession, if known;
- the name of each lienholder, if known or reasonably subject to discovery;
- an allegation that the property is subject to forfeiture;
- if seeking forfeiture of a lienholder's interest in property, an allegation that the lien was created with actual knowledge that the property was being or was to be used in violation of the controlled dangerous substances law;
- a statement of the facts and circumstances surrounding the seizure;
- a statement setting forth the specific grounds for forfeiture; and
- an oath or affirmation that the contents of the complaint are true to the best of the affiant's knowledge, information, and belief.

Within 20 days after the filing of the complaint, copies of the summons and complaint must be sent by certified mail requesting “restricted delivery – show to whom, date, address of delivery” and first class mail to all known owners and lienholders whose identities are reasonably subject to discovery, including all real property owners and lienholders shown in the records required by law for notice or perfection of the lien.

Notice of the proceedings must be given by posting at the courthouse, on the land if the property is real property, and in a newspaper for three consecutive weeks. If the owner does not timely file an answer to the complaint, the court may order forfeiture of the property without a hearing. Otherwise, a hearing must be held. Subsequent to a full hearing, a court may order that the property be released, forfeited to the appropriate governing body, or released within five days to the first priority lienholder if the property is subject to a valid lien and the lienholder did not have actual knowledge of the property’s unlawful use.

Under human trafficking provisions, a State or local law enforcement unit may seize property in connection with a violation of and conviction under the human trafficking law. These provisions limit the types of property that can be seized, and specify the procedures and conditions that must be met for property to be seized.

The U.S. Marshals Service administers the Department of Justice’s Asset Forfeiture Program by managing and disposing of properties seized and forfeited by federal law enforcement agencies and U.S. attorneys nationwide. Under the federal Equitable Sharing Program, the proceeds from sales are often shared with the state and local enforcement agencies that participated in the investigation which led to the seizure of the assets.

Although administered by the U.S. Marshals service, federal asset forfeiture efforts include participation by all U.S. Attorney’s Offices; the Federal Bureau of Investigation; the Drug Enforcement Administration; the Department of Homeland Security; and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

State Fiscal Effect: State expenditures increase by at least \$217,638 in fiscal 2015 for various State law enforcement agencies to comply with the bill’s reporting requirements, as discussed below. Future year expenditures reflect annualization and inflation.

General fund expenditures increase for GOCCP by \$58,519 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring a full-time data analyst to compile and analyze data and write the required annual reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$53,714 |
| Additional Equipment | 4,370 |
| Other Operating Expenses | <u>435</u> |
| Total FY 2015 GOCCP Expenditures | \$58,519 |

Future year expenditures (which increase to \$85,259 by fiscal 2019) reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The bill authorizes MSAC to recoup its costs by charging a fee to law enforcement agencies that engage in seizures or forfeitures during the reporting period. Because the fee has not yet been set, and because the number of State and local law enforcement agencies subject to a fee in any given year is unknown, any general fund revenues generated as a result of the fee cannot be reliably quantified, and it is unknown if fee revenue could fully offset costs.

University System of Maryland

General fund expenditures increase for the University System of Maryland at the University of Maryland, Baltimore County (UMBC) by \$55,476 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring a full-time records manager to meet the bill's reporting requirements. It includes salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|--|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$50,671 |
| Additional Equipment | 4,370 |
| Other Operating Expenses | <u>435</u> |
| Total FY 2015 UMBC Expenditures | \$55,476 |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Department of Transportation

The Maryland Department of Transportation reports that the Maryland Transportation Authority police already track information required to be reported under the bill. However, Maryland Transit Administration police do not. Thus, TTF expenditures increase by \$103,643 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring a full-time data analyst to meet the

bill's reporting requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---------------------------------------|------------------|
| Position | 1 |
| Salary and Fringe Benefits | \$98,838 |
| Additional Equipment | 4,370 |
| Other Operating Expenses | <u>435</u> |
| Total FY 2015 TTF Expenditures | \$103,643 |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Other Agencies

PTC advises that the bill's responsibilities relating to an agency's failure to comply with annual reporting requirements can be met with existing budgeted resources. PTC notes that its responsibilities under the bill are similar to current law obligations relating to annual race-based traffic stop reports and SWAT team reports.

All other responding State law enforcement agencies – including the State Police, the Natural Resources Police, and the Department of General Services Police – report that the bill's requirements can be met with existing budgeted resources.

Costs to Pay Any Fees Established

The estimates provided above for the various affected State law enforcement agencies, do not include any costs to pay any fees established by MSAC.

Any State agency that is affected by the bill may use forfeiture proceeds to pay the cost of compiling and reporting the required data, including the costs of any fee imposed by MSAC. The extent to which the proceeds from seizures and forfeitures are redirected under the bill for these purposes from the general fund or any special fund is unknown; accordingly, general/special fund revenues may be affected.

The bill has no operational or fiscal impact on the Judiciary.

Local Fiscal Effect: The bill's effect on local law enforcement likely varies by agency and depends largely on an agency's participation in seizure and forfeiture efforts.

Frederick County reports that the bill requires the county to hire one additional person for assignment to the Frederick County State's Attorney's Office at an annual cost of about \$58,000 and one part-time administrative specialist for the county at a cost of about

\$35,100. Depending on how MSAC requires the reporting to be done, additional costs may be needed for computer software.

Baltimore, Charles, and Montgomery counties report that the data required under the bill is currently tracked and that the bill's reporting requirements can be handled with existing resources.

Although the bill allows the cost of the bill's reporting requirements to be met with proceeds from forfeitures, the extent to which local law enforcement agencies already use those proceeds for other purposes is unknown. Thus, local law enforcement agencies may be negatively affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; towns of Bel Air and Leonardtown; Governor's Office of Crime Control and Prevention; Department of Natural Resources; Department of General Services; Department of State Police; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; U.S. Department of Justice; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2014

ncs/lgc

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