

SUBJECT: Audits of property and proceeds seized by law enforcement, prosecutors

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Talton, Dunnam, Farrar, Hinojosa, Nixon
2 nays — Galloway, Keel
2 absent — Place, A. Reyna

WITNESSES: For — Larry Zacharias, Texas Police Chief's Association; Barry Macha
Against — None
On — Rob Kepple, Texas District and County Attorneys Association

BACKGROUND : Law enforcement agencies and prosecutors receiving proceeds or property under the state's forfeiture law are required to account for the seizure, receipt and disbursement of the proceeds and property in an audit performed by their commissioners court or the governing body of their city. The audit must be done on a form provided by the governor's criminal justice division, and certified copies must be delivered by the law enforcement agency or prosecutor to the division within 30 days of its completion.

DIGEST: CSHB 2257 would add information about proceeds or property that is forfeited to the items that must be included in the report and would eliminate the requirement that the report include information on the *disbursement* of the proceeds and property but would require information on *specific expenditures* to be included.

The bill would require that the annual audit done by law enforcement agencies be based on their city's or county's fiscal year and that audits done by prosecutors be based on the state's fiscal year. The audits would have to be delivered to the governor's criminal justice division within 30 days after the end of the audit period. Law enforcement agencies and prosecutors not receiving proceeds or property during their annual audit period would be required to report that they received no proceeds or property to the governor's criminal justice division within 30 days of the end of the audit

period.

Law enforcement agencies and prosecutors would be able to use proceeds from forfeitures to contract for the preparation of the audit.

CSHB 2257 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSHB 2257 would ensure that forfeitures are included in the annual audits of proceeds and property disposed of by law enforcement agencies and prosecutors and would clear up confusion in the current system used for accounting for these proceeds and property. This would be the first step in tightening up these reporting requirements so that an accurate picture of statewide seizures and forfeitures can be developed.

Because current law does not specifically mention that forfeitures have to be included in the annual audits, there has been some question about including them. CSHB 2257 would clearly state that forfeitures are to be included in the audit, ensuring that an accounting is made of forfeitures and that misapplications of these proceeds do not occur. The bill also would more clearly define how pay outs of proceeds and property are to be reported by requiring that specific expenditures be included in the audit.

Currently, confusion exists because there are no statewide guidelines for what time frame the audit should cover, and there is no deadline for turning in the audit. CSHB 2257 would solve these problems by setting the audit periods as the fiscal year of the county or city for law enforcement agencies and as the state's fiscal year for prosecutors. This would allow counties and cities to perform the audits at the same time they are closing out their books and doing other year-end accounting. CSHB 2257 also would require entities that do not receive any proceeds or property during a year to let the Governor's Office know so that a complete statewide accounting can be made. Requiring the audits to be turned in to the Governor's Office within 30 days of the end of the fiscal year would give the entity doing the audit ample time while ensuring that the audits are given to the Governor's Office in a timely manner.

Allowing law enforcement agencies and prosecutors to use proceeds from seizures and forfeitures to perform the audit would be a prudent use of these

funds and would reduce audit cost for these entities.

OPPONENTS SAY: CSHB 2257 could put unreasonable demands on cities, counties, law enforcement agencies and prosecutors. The end of the fiscal year could be a busy time, and it might be difficult to conduct an audit and get it submitted to the governor within 30 days.

OTHER OPPONENTS SAY: CSHB 2257 should include penalties for not submitting an annual audit to help ensure that they are performed.

NOTES: The original version of the bill would have required the audits to be done based on the calendar year.