AMENDED

March 27, 2019

**H. 3307**

Introduced by Reps. Clemmons, Fry, Crawford, Allison, Yow, Daning, Elliott, Hewitt, G.R. Smith, Hixon, Taylor, Magnuson, Gagnon, Johnson, Clary, Pendarvis, McKnight, Rose, Cogswell, Cobb‑Hunter, B. Newton, Mace, Caskey, Moore, Gilliard and Blackwell

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Read the first time January 8, 2019.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 8, 2019**

**State Expenditure**

This bill establishes provisions related to the reporting of properties seized by or forfeited to the State Law Enforcement Division (SLED) or other law enforcement agency within the state. SLED will be responsible for the creation and maintenance of a case tracking system that will contain specific information identifying seized or forfeited properties. SLED must also create and maintain a searchable public website of seized or forfeited properties. This website will include information on the total value of seized or forfeited properties, as well as the total amount of proceeds from forfeited properties that are expended to support crime prevention programs, victim reparations, and SLED operations.

Law enforcement agencies that seize property, as well as prosecutors litigating related criminal cases and forfeiture proceedings, must update SLED’s website with required information on these properties by the end of the month in which the property was seized. The commander of a multi-jurisdictional task force may appoint one agency to report all property seizures for the area. If no seizures were made during the previous year, a null report must be filed by the agency to confirm that no property seizures or forfeitures were administered during the reporting period. Law enforcement agencies will have 30 days after the end of a fiscal year within which to update SLED’s website with the required information. SLED will be responsible for developing a standard form, webpage, process, and deadlines for electronic entry of data on seizures, forfeitures, and expenditures of proceeds by law enforcement agencies.

The State Auditor will be responsible for performing an annual financial audit using generally accepted auditing standards for records on properties seized or forfeited by law enforcement agencies, as well as expenditures from the proceeds of those properties. The final audit report must be submitted to SLED no later than 90 days after the end of the fiscal year and must be released to the public. SLED will then have 120 days after the end of the fiscal year to submit to the Speaker of the House of Representatives, President of the Senate, Attorney General, and Governor an aggregate report containing information on the type, approximate value, and disposition of property seized; the amount of any proceeds received or expended at the state and local levels; recommendations to improve state forfeiture laws to ensure fairness to victims, innocent property owners, secured interest holders, citizens, and taxpayers; and a listing of law enforcement agencies that are not in compliance with the seized and forfeited property provisions. This report must also be posted on SLED’s website and is subject to disclosure under the Freedom of Information Act.

In implementing the provisions of the bill, SLED may recoup its costs from law enforcement agencies engaged in the seizure or forfeiture of property. Additionally, law enforcement agencies may use forfeiture proceeds to pay for compiling and reporting required data and to cover the cost of fees imposed by SLED.

**State Law Enforcement Division.** A determination of the bill’s fiscal impact is pending, as the agency is still reviewing the bill.

**Department of Natural Resources (DNR).** This bill would require applicable law enforcement agencies to work with SLED to submit data reports and information, and allows SLED to recoup costs associated with administering this bill by charging a fee to these agencies. Each law enforcement agency is allowed to use forfeiture proceeds to pay the cost of compiling and reporting the requested data, including any fee imposed by SLED. DNR indicates that this bill charges the department with additional responsibilities that the agency is able to accomplish by assigning duties among existing staff. Over the past 4 years, DNR has had one seizure and forfeiture case, which was adjudicated over a year ago. The current balance in their Escrow Funds account, which DNR would use to pay any applicable fees to SLED, is $7,047. Due to the low volume of seizure and forfeiture cases, DNR anticipates any fees paid to SLED will be negligible.

**Department of Public Safety.** The department indicates that since law enforcement agencies are allowed to use forfeiture proceeds to pay the cost of compiling and reporting the requested data, including any fee imposed by SLED, this bill will have no expenditure impact on the general fund, other funds, or federal funds of the agency.

**Commission on Prosecution Coordination.** The commission indicates that the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds of the agency.

**Commission on Indigent Defense.** The commission indicates that the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds of the agency.

**Office of the State Auditor.** The agency reports that the implementation of this bill would require the hiring of an Audits Manager. The position would lead the examination process of the information with each local or state agency. There would be a recurring general fund cost of $98,895 for salary and fringe benefits and a non-recurring general fund cost of $1,000 for other operating expenses.

**State Revenue**

A determination of state revenue is currently pending because the bill allows SLED to recoup costs associated with administering this bill by charging a fee to appropriate agencies. Since SLED is still reviewing the bill, the amount of the fee is currently unknown.

**Local Expenditure**

Of the counties and municipal organizations surveyed, only Clarendon County and the Horry County provided responses on the expected expenditure impact of the bill. Both parties report that the amount of the fee SLED will charge is unknown and there is no way to estimate an expenditure impact to county or municipal governments. However, Horry County did report an annual expenditure of $1,500 for the manpower cost for the inputting of data in the database.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 17 TO CHAPTER 3, TITLE 23 SO AS TO PROVIDE THAT THE STATE LAW ENFORCEMENT DIVISION SHALL ESTABLISH AND MAINTAIN A CASE TRACKING SYSTEM AND SEARCHABLE WEBSITE THAT INCLUDES CERTAIN INFORMATION ABOUT PROPERTY SEIZED BY LAW ENFORCEMENT AGENCIES AND FORFEITED UNDER STATE LAW OR UNDER ANY AGREEMENT WITH THE FEDERAL GOVERNMENT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Article 17

Reporting of Property Seized and Forfeited

Section 23‑3‑1500. ‘Law enforcement agency’ means any police force, multijurisdictional task force, fire department, or other local, county or state agency that has the authority under state law or operates in cooperation with a federal agency under federal law to engage in the seizure and forfeiture of property.

Section 23‑3‑1510. This article is applicable to any provision that authorizes a law enforcement agency to seize property that is used in the commission of a criminal offense as provided by law. No other type of forfeiture by law enforcement is authorized as of the effective date of this section including, but not limited to, civil‑administrative forfeitures or civil‑judicial forfeitures;

Section 23‑3‑1520. (A) The State Law Enforcement Division (SLED) shall establish and maintain a case tracking system and searchable public website that includes the following information about property seized by a law enforcement agency and forfeited under state law or under any agreement with the federal government:

(1) name of the law enforcement agency that seized the property;

(2) date the property was seized;

(3) type of property seized, including year, make, model, and serial number, as applicable;

(4) location of the seizure: home; business; traffic stop including street name and traffic direction where the seizure occurred;

(5) estimated value of the seized property;

(6) criminal offense that led to the seizure;

(7) crime for which the suspect was charged;

(8) criminal case number;

(9) outcome of any related criminal action, to include whether any charges were brought or dropped, a plea bargain was reached, a conviction was obtained, or an acquittal was issued;

(10) if the forfeiture was not processed under state law, the reason for the federal transfer: adoption or joint task force;

(11) forfeiture case number;

(12) whether a claim or counterclaim was filed by a suspect, innocent property owner, or a joint or third‑party owner;

(13) the criminal offense charged as provided by law which allows forfeiture;

(14) whether the property owner was represented by an attorney in the forfeiture case;

(15) date of forfeiture decision;

(16) total administrative and other expenses deducted as part of the forfeiture process;

(17) net amount received from the forfeiture;

(18) disposition of property following its seizure, to include whether the property was:

(a) fully returned to the owner;

(b) partially returned to owner;

(c) destroyed;

(d) sold after forfeiture; or

(e) retained after forfeiture by law enforcement; and

(19) date of forfeiture decision.

Section 23‑3‑1530. (A) SLED shall establish and maintain a searchable public website that includes:

(1) the total value of seized and forfeited property held by the agency at the end of the reporting period; and

(2) the total amount of funds expended, in each of the following nine categories, which resulted from property seized, forfeited, and reported in Section 23‑3‑1520:

(a) drug abuse, crime, and gang prevention programs;

(b) victim reparations;

(c) investigation costs, including witness protection, informant fees, and controlled buys;

(d) salaries, overtime, and benefits, as permitted by law;

(e) professional outside services, including auditing, court reporting, expert witness fees, outside attorney fees and membership fees paid to trade associations;

(f) travel, meals, entertainment, conferences, training, and continuing education;

(g) other operating expenses including office supplies, postage, and printing;

(h) capital expenditures including vehicles, firearms, equipment, computers, and furniture; and

(i) other expenditures of forfeiture proceeds.

(B) SLED may require that information not specified in this section also be reported.

Section 23‑3‑1540. The law enforcement agency that seizes property and prosecutors that litigate related criminal cases and forfeiture proceedings shall update SLED’s website with the information required under Section 23‑3‑1520 at the end of the month following each seizure of property. The commander of a multijurisdictional task force may appoint one agency to report its seizures. If an agency has made no seizures during the previous year, a null report shall be filed by the agency specifying that it did not engage in seizures or forfeitures during the reporting period.

Section 23‑3‑1550. The law enforcement agency that expends forfeiture‑related proceeds shall update SLED’s website with the information required under Section 23‑3‑1530 within thirty days after the end of the fiscal year. The commander of a multijurisdictional task force may appoint one agency to report its expenditures.

Section 23‑3‑1560. (A) SLED shall develop a standard form, webpage, process and deadlines for electronic data entry for submission of seizure data, forfeiture data and expenditures of proceeds by law enforcement agencies.

(B) The State Auditor shall perform annually a financial audit under the generally accepted auditing standards of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to SLED no later than ninety days after the end of the fiscal year and shall be made public.

(C) One hundred twenty days after the close of the fiscal year, SLED shall submit to the Speaker of the House of Representatives, President of the Senate, Attorney General, and Governor a written report summarizing activity in the State, for the preceding fiscal year, that includes the type, approximate value, and disposition of property seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. The aggregate report also shall be made available on SLED’s website.

(D) SLED shall include in its aggregate report recommendations to the General Assembly to improve forfeiture laws 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.

(E) SLED shall include in its aggregate report information on law enforcement agencies that are not in compliance with this article.

(F) SLED may recoup its costs by charging a fee to law enforcement agencies that engage in seizures or forfeitures during the reporting period. Each law enforcement agency may use forfeiture proceeds to pay the cost of compiling and reporting data under this article, including any fee imposed by SLED.

(G) The data and reports compiled and prepared under this article regarding completed forfeitures are public information pursuant to Chapter 4, Title 30**.**

(H) SLED may adopt rules that are necessary to implement this article.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. The provisions of this act take effect six months after approval by the Governor, except that the provisions of Section 23-3-1510, relating to forfeitures that are legal in this State, take effect immediately upon approval of the Governor.

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