

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: SB 341

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Peake

3. Committee: Finance

4. Title: Asset forfeiture

5. Summary:

Under current law, any cash, equipment, motor vehicles, and other personal and real property (i) used in the commission of numerous criminal offenses, (ii) traceable to the proceeds of violation of numerous criminal offenses, or (iii) used to promote several criminal activities, is subject to seizure by law-enforcement officials and forfeiture by the courts. The Code of Virginia sets out a procedure whereby the courts can order the forfeiture of the assets seized.

For some specific offenses, the statutes prohibit the forfeiture of seized property until the conviction of the person or person charged with the applicable offenses. For other offenses, the law does not require a conviction before forfeiture proceedings can commence. The proposed legislation would require that all forfeiture proceedings be stayed until a finding of guilt of the owner or owners of the property seized. The legislation provides two exceptions to this requirement: (1) the property can be ordered forfeited pursuant to a plea agreement and (2) the property can be forfeited if the owner has not requested its return within one year from the date on which it was seized.

6. Budget Amendment Necessary: None.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

8. Fiscal Implications:

The Virginia Constitution directs that the proceeds of all property forfeited to the Commonwealth be deposited into the Literary Fund to be used for public school purposes. However, the Constitution does authorize the General Assembly to exempt proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws proscribing the manufacture, sale or distribution of a controlled substance or marijuana and to use those proceeds to promote law enforcement activities. The General Assembly has established a process whereby the assets related to violation of drug laws can be seized and forfeited, with the proceeds distributed to the state and local law-enforcement agencies involved in the investigation of the cases.

To the extent that any of the cases in which assets were forfeited end without a conviction, there could be a loss of revenue for state and local law-enforcement agencies if the proposed legislation is enacted. There is not sufficient data available regarding the outcome of cases in which forfeiture was ordered to estimate any potential loss, but the Virginia State Crime Commission noted, in a 2016 report, that “most asset forfeitures are a result of default judgment or some type of plea agreement or settlement,” which are exceptions allowed under the proposed legislation. Therefore, it is expected that the fiscal impact to state agencies due to a loss of asset revenue will not be significant.

Because the provisions of the legislation would allow owners of seized property a year to request the return of the property, there could be a fiscal impact on agencies arising from the costs of storing seized property for that period. However, it is not possible to estimate the potential amount of such storage costs.

9. Specific Agency or Political Subdivisions Affected:

Department of Criminal Justice Services
Department of State Police
Institutions of higher education
Sheriffs
County, city, and towns
Commonwealth’s attorneys

10. Technical Amendment Necessary: None.

11. Other Comments: None.