

Department of Planning and Budget
2016 Fiscal Impact Statement

1. Bill Number: SB 108

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

2. Patron: Petersen

3. Committee: Senate Finance

4. Title: Asset forfeiture

5. Summary:

In the Commonwealth, the forfeiture of assets associated with criminal activity is a judicial proceeding. The Code of Virginia sections dealing with forfeiture vary somewhat in their provisions. In some cases, the sections require that there be a conviction of a crime before the forfeiture can proceed. In others, there is no such requirement, but a general statute gives courts, for good cause shown, the discretion to stay forfeiture proceedings that are related to any indictment or information.

The proposed legislation would require that all forfeiture actions be stayed until the owner of the property, or the person in whose custody the property had been found, was found guilty of the criminal statute under which the property had been seized. If no finding of guilt were found, the property must be released from seizure. However, property seized may be forfeited even though no finding of guilt had been made if (i) the forfeiture were ordered by the court pursuant to a plea agreement or (ii) the owner of the property, or the person in whose custody the property had been found, had not submitted a written demand for the return of the property within one year from the date of the seizure.

6. Budget Amendment Necessary: None.

7. Fiscal Impact Estimates: Indeterminate. See Item 8 below.

8. Fiscal Implications:

Under the provisions of the Virginia Constitution, the proceeds of a forfeiture for a violation of drug laws may be distributed for law enforcement purposes. The proceeds of forfeitures connected to non-drug criminal offenses are to be deposited into the Literary Fund.

For drug crime connected forfeitures, the proceeds, after costs (such as sales commissions and storage costs) are paid, the balance is deposited into a special fund in the state treasury. The Department of Criminal Justice Services (DCJS) keeps 10 percent of the amount

deposited and distributes the remainder to the state or local agency or agencies that directly participated in the law enforcement action that led to the forfeiture.

The proposed legislation could result in a decrease in forfeiture proceeds that could be deposited into the Literary Fund or distributed to law enforcement agencies. Under current law, it is possible in some cases for forfeiture to occur although the defendant is not convicted of the alleged crime related to the forfeiture. In contrast, the legislation would require that the defendant be found guilty or that the forfeiture be included in a plea agreement before forfeiture proceedings could go forward. However, in a 2015 study, the Virginia Crime Commission did not report any evidence that the property of persons found not guilty was being forfeited. When the property is seized, the law enforcement agency may be ordered to maintain the seized property in the same condition as when it was seized. While there may be costs associated with the maintenance of a seized property, at this time it cannot be determined.

9. Specific Agency or Political Subdivisions Affected:

Department of Criminal Justice Services
Department of State Police
Department of Accounts (Literary Fund)
State and local law enforcement agencies

10. Technical Amendment Necessary: None.

11. Other Comments: Similar to HB 48.

Date: 2/8/2016

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