

SENATE BILL REPORT

SB 6656

As Reported By Senate Committee On:
Ways & Means, February 5, 1998

Title: An act relating to moneys received by the state in regulatory and enforcement actions and settlements.

Brief Description: Regulating the expenditure of moneys received by the state in regulatory and enforcement actions and settlements.

Sponsors: Senators West and Strannigan.

Brief History:

Committee Activity: Ways & Means: 2/3/98, 2/5/98 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6656 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Hochstatter, Long, McDonald, Rossi, Swecker, Winsley and Zarelli.

Minority Report: Do not pass.

Signed by Senators Loveland, B. Sheldon and Thibaudeau.

Staff: Steve Jones (786-7440)

Background: Regulatory and enforcement activities of state agencies may result in the imposition of fines or the payments of other penalties or assessments.

Regulatory and enforcement actions by state agencies may be resolved by a court decision, may be settled out of court, or may be decided administratively. These actions may result in various payments to state agencies that take the form of fines, penalties, regulatory assessments, damages, or the recovery of agency expenses.

A December 1997 report of the Senate Ways & Means Committee found that revenues received by state agencies in regulatory and enforcement actions may be expended outside of the legislative appropriation process by one or more of the following statutory mechanisms: (1) deposit of the revenue in a nonappropriated account; (2) expenditure from an appropriated account through the unanticipated receipt process, or (3) re-expenditure of the revenue as a recovered expense.

Nonappropriated Accounts. By statute, various fines and other penalties may be deposited into the General Fund or may be statutorily directed into another appropriated fund or a nonappropriated account. Article VIII, section 4 of the state Constitution prohibits moneys in the state treasury from being spent without an appropriation by the Legislature. However,

some state accounts are statutorily created outside the state treasury and do not require a legislative appropriation for expenditures. The expenditure of moneys from appropriated accounts and most nonappropriated accounts is supervised by the Office of Financial Management (OFM) through the allotment process. Under this procedure, OFM approves the agency's financial plan and monitors expenditures quarterly.

Where a regulatory or enforcement action results in payments to be made for restitution or reimbursement to identifiable persons, the party causing the harm may make payment directly to the injured parties, or payment may be made through a nonappropriated state fund for distribution by the Attorney General or some other state agency. Where the injured parties cannot be readily identified (or the amounts due to each person are so small as to make individual payments unfeasible), the legal doctrine of *cy pres* may be employed. Also known as the "doctrine of approximation," the *cy pres* doctrine allows payments intended to reimburse the injured parties to be used to benefit the class of affected persons generally, with no direct payments to any individual. In some regulatory or enforcement actions, *cy pres* revenues have been distributed to state agencies for expenditure on programs that are intended to indirectly benefit the class of injured parties.

Unanticipated Receipts. The unanticipated receipts process is a statutory process that authorizes state agencies to spend, without an appropriation, moneys received from the federal government or from other sources outside of the state treasury, such as private grants. If an agency receives moneys from such sources, and the moneys were not anticipated in the budget and are designated to be spent for a specific purpose, then the agency may submit a request to the Office of Financial Management for authority to expend the moneys. Before OFM approves the expenditure, it must notify the legislative fiscal committees and the Joint Legislative Audit and Review Committee. The typical unanticipated receipt is a one-time occurrence, such as a federal grant, that does not permanently increase agency staffing, activity, or funding levels.

Recovered Expenses. In the final resolution of regulatory actions, state agencies often recover moneys that were expended by the agency for legal fees, court costs, and the expenses of investigation. The state budget and state accounting rules allow these recovered funds to be re-expended by the agency without further appropriation.

Policy Implications of Agency Expenditures of Enforcement Revenues. The December 1997 Senate Ways & Means Committee report found that the expenditure of enforcement revenues by state agencies may not be consistent with legislative policy and fiscal priorities established through the state budget process. In addition, the retention of revenue by a regulatory agency without legislative oversight may create an incentive for the agency to pursue and settle regulatory issues in a manner that enhances the agency's financial resources.

Summary of Substitute Bill: An appropriation is required for expenditure of any moneys received by the state in regulatory enforcement actions, including penalties, fines, and settlements. The unanticipated receipt process cannot be used to spend penalties, fines, settlements, or other funds received in regulatory actions. Moneys received in regulatory actions cannot be re-expended as recovered expenses without a legislative appropriation. The Attorney General, in antitrust and consumer protection cases, must seek court orders and settlements that require a legislative appropriation for any recovered moneys unless the recovery is paid to injured parties or a class of parties as damages or restitution. Class

action settlements under the doctrine of *cy pres* are subject to legislative appropriation if expenditures are to be made by a state agency in lieu of damages, restitution, or refunds.

The bill does not apply to fees established by statute or administrative rule.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 1999.

Testimony For: The substitute bill allows restitution and damages to be paid without an appropriation by the state in class action cases. The Department of Labor and Industries collects over \$13 million in fines and penalties each biennium, which are deposited in various trust funds.

Testimony Against: None.

Testified: David Walsh, Attorney General's Office; Susan Mager, Department of Labor and Industries.