

NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1988.

Passed the Senate March 6, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 8, Substitute House Bill No. 1652, entitled:

"AN ACT Relating to investment of public funds."

Section 8 of Substitute House Bill No. 1652 would amend existing law to allow public transportation benefit area authorities to appoint their own treasurers, without prior approval of the county treasurer. Under current law, the county treasurer must approve such an appointment.

I understand that the problem giving rise to this amendment has been resolved, and that there is no statewide concern about the existing approval requirement. Indeed, county treasurers have in most instances granted this authority when asked. In those instances where the authority to appoint a treasurer has been denied, there were reportedly good operational reasons for the denial. As operations improved, authorities were granted the power to hire their own treasurers. The current system seems to work.

Further, from a public policy perspective, it makes sense for the chief financial officer of a county, who is an elected official directly accountable to the citizens, to exercise some control over the appointment of those individuals who will be managing and investing public funds.

With the exception of section 8, Substitute House Bill No. 1652 is approved."

CHAPTER 282

[Engrossed Substitute Senate Bill No. 6316]

DRUG CRIMES—DISTRIBUTION OF FUNDS FROM FORFEITED PERSONAL PROPERTY

AN ACT Relating to the forfeiture of real property from the commercial sale or production of controlled substances and imitation controlled substances where a substantial nexus exists between the commercial production or sale of the substances and the real property and providing for the redistribution of proceeds from the sale of forfeited property; amending RCW 69.50.505; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

****NEW SECTION. Sec. 1. The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation,***

prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest.

*Sec. 1 was vetoed, see message at end of chapter.

*Sec. 2. Section 15, chapter 2, Laws of 1983 as last amended by section 9, chapter 124, Laws of 1986 and RCW 69.50.505 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, ((or) acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used to transport, or are used, or intended for use, in any manner to facilitate the sale, transfer, or receipt of property described in paragraphs (1) or (2), ((but)) except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission ((established by the owner thereof to have been)) committed or omitted without ((his)) the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW, the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia; ~~(and)~~

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible property, intangible property, proceeds, or assets acquired in whole or in part with proceeds traceable to ((such)) an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW: PROVIDED, That no property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission ((which that owner establishes was)) committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property, and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until the hearing on the forfeiture is held, whichever is later. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Notice of seizure of real property or of personal property of a value of ten thousand dollars or more shall be by personal service upon the owner. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) ((or) (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. However, no real

property may be forfeited pursuant to this section, to the extent of a person's community property interest in the real property, by reason of any act or omission committed or omitted without the person's knowledge or consent.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) ((or)), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The court to which the matter is to be removed shall be the district court when such aggregate value is ten thousand dollars or less. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the ((person claiming to be the lawful owner or the person claiming to have the lawful right to possession of items specified in subsection (a)(4) or (a)(7) of this section)) law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(4) ((or)), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) (i) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this title shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after the payment of all expenses shall be distributed as follows:

~~((Fifty))~~ (A) Seventy-five percent of the money ((remaining after payment of such expenses)) shall be deposited in the general fund of the state, county, and/or city of the seizing law enforcement agency(;) and shall be used exclusively for the expansion or improvement of law enforcement services. These services may include the creation of reward funds for the purpose of rewarding informants who supply information leading to the arrest, prosecution and conviction of persons who violate laws relating to controlled substances. Such moneys shall not supplant preexisting funding sources; and

~~((fifty))~~ (B) Twenty-five percent shall be remitted to the state treasurer for deposit in the public safety and education account established in RCW 43.08.250;

(C) If an investigation involves a seizure of moneys and proceeds having an aggregate value of less than five thousand dollars, the moneys and proceeds may be deposited in total in the general fund of the governmental unit of the seizing law enforcement agency and shall be appropriated exclusively for the expansion of narcotics enforcement services. Such moneys shall not supplant preexisting funding sources.

(ii) Money deposited according to this section must be deposited within ninety days of the date of final disposition of either the administrative seizure or the judicial seizure;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(i) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be entered

by the seizing agency in the county auditor's records in the county in which the real property is located.

*Sec. 2 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 8, 1988.

Passed the House March 2, 1988.

Approved by the Governor March 24, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 24, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 2(a) through (e) and (g) through (j), Engrossed Substitute Senate Bill No. 6316 entitled:

"AN ACT Relating to the forfeiture of real property from the commercial sale or production of controlled substances and imitation controlled substances where a substantial nexus exists between the commercial production or sale of the substance and the real property and providing for the redistribution of proceeds from the sale of forfeited property."

The concept and consensus behind this bill was to provide law enforcement officials with an additional tool for seizing some of the financial booty invested in "real property" (land and buildings) which was acquired by illegal drug dealers as a result of, or to further, their activities. Examples might be houses used to grow marijuana products in substantial amounts or amphetamine manufacturing operations. Currently, the immense profits which can be realized from these illegal drug activities are so substantial that they overshadow the risk of apprehension and a prison term. The intention was to attach and forfeit some of the "real property" fruits of this illegal activity in the hope of removing some of the financial benefit.

Law enforcement officials currently have the statutory authority to seize "personal property" which is connected and used in illegal drug trafficking. The goal was to extend this same concept to "real property".

The language which is presented to me in this bill has, after its passage and upon thorough review, received rejection from the law enforcement community. Their analysis is that the bill, because of shifting the burden of proof and a number of other changes which were incorporated both for the existing "personal property" provisions and for the new "real property" provisions, would provide a net loss, rather than a gain, in their efforts to seize property related to illegal drug transactions. Specifically, the law enforcement community has indicated that the new law would effectively hinder their ability to seize personal property under existing statutes as well as making it impossible to seize "real property" except in rare cases.

I would encourage the Legislature and the law enforcement community to work together in the next session to again review this issue and attempt to pass a law which allows law enforcement to continue under existing law for the "personal property" forfeitures while adding new separate provisions for "real property" forfeitures.

It is appropriate to consider different safeguards and procedures for "real property" interests than for "personal property" interests. I believe law enforcement should have the burden of showing that the individuals were engaged in illegal drug transactions and that the property was related to the transactions. However, the individuals involved should have the burden of showing that they are the lawful owners of the property used in any manner to facilitate the illegal drug transaction. Given the large amounts of cash money involved and criminal necessity of hiding the fruits

of their illegal activity, it is an unrealistic burden on law enforcement to prove more than the fact that individuals were criminally involved and that the property was used or acquired by those illegal means.

I have not vetoed the sections related to changing the distribution of funds received for personal property which is forfeited. This part of the bill is contained in section 2(f).

With the exception of sections 1, 2(a) through (e) and (g) through (j), Engrossed Substitute Senate Bill No. 6316 is approved."

CHAPTER 283

[Engrossed Substitute House Bill No. 1701]

SUPPLEMENTAL TRANSPORTATION BUDGET

AN ACT Relating to transportation appropriations; amending section 3, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 7, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 10, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 17, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 18, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 19, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 20, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 22, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 23, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 24, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 25, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 26, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 27, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 28, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 29, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 30, chapter 10, Laws of 1987 1st ex. sess. (uncodified); amending section 39, chapter 10, Laws of 1987 1st ex. sess. (uncodified); adding new sections to chapter 10, Laws of 1987 1st ex. sess. (uncodified); creating new sections; repealing section 55, chapter 10, Laws of 1987 1st ex. sess. (uncodified); repealing section 56, chapter 10, Laws of 1987 1st ex. sess. (uncodified); making appropriations and authorizing expenditures; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 10, Laws of 1987 1st ex. sess. (uncodified) is amended to read as follows:

FOR THE RAIL DEVELOPMENT COMMISSION

Rail Development Account Appropriation \$ ((300,000))
663,900

The appropriation in this section is subject to the following conditions and limitations: ((If House Bill No. 1034 is not enacted by July 1, 1987, the appropriation in this section shall be from the general fund:))

(1) \$55,000 of the appropriation is the state's share for a study to determine the ridership forecast and financial feasibility of a commuter rail demonstration project in the south corridor of the central Puget Sound region. The commission shall select the appropriate public/private agency to conduct the study and shall have oversight responsibility. State moneys shall be matched in an amount at least equal to the state's share by local jurisdictions.