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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Molly Rattigan for Nancy Watt - County Executive Officer
County Executive Office
REPORT BY: Molly Rattigan, Management Analyst, 253-4112
SUBJECT: Asset Forfeiture Presentation

RECOMMENDATION

County Executive Officer and Auditor/Controller request that the Board:

1. Receive a presentation on the Asset Forfeiture Fund distribution law and methodology; and
2. Approve the Napa Special Investigations Bureau (NSIB) Governing Board's requested distribution totalling \$140,394 from funds held in the Napa Special Investigations Bureau Trust Account.

EXECUTIVE SUMMARY

This presentation will discuss the laws and methodology behind the distribution and use of asset forfeiture funds in Napa County. According to California Asset Forfeiture laws, funds that have been forfeited are held in individual Trust Accounts while the case is being handled by the District Attorney's Office. Upon adjudication, funds must be disbursed per the Health and Safety Code.

In addition, the Napa Special Investigation Bureau (NSIB) Governing Board requests approval of the distribution of \$140,394 of asset forfeiture funds available in the NSIB Trust Account in Fiscal Year 2006-2007. These funds would be allocated in accordance with NSIB's By-Laws.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Sheriff Probation District Attorney

Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Asset forfeiture funds must be distributed according to State law. The Napa County Special Investigations Bureau Governing Board has adopted bylaws that describe the distribution of the funds they receive as being the participating law enforcement agency. NSIB has the legal right to request distribution of these funds at any time.
Is the general fund affected?	No
Future fiscal impact:	Asset forfeiture funds are distributed on an annual basis and dependent upon funds available.
Consequences if not approved:	If this item is not approved, local law enforcement agencies will not receive the share of asset forfeiture funds they are entitled to per the bylaws of the NSIB Governing Board.
Additional Information:	None.

ENVIRONMENTAL IMPACT

There is no Environmental Impact for this item.

BACKGROUND AND DISCUSSION

Asset Forfeiture Distribution Laws and Methodology

Supervisor Dillon requested a presentation concerning this issue.

Section 11489 of the Health and Safety Code defines the distribution process in cases where property is seized and forfeited to the State of California or a local governmental entity. In the County of Napa, when a subject is booked on charges and property is seized, funds are deposited to a Trust Account under the subject's name. The funds remain in Trust until the case is adjudicated or dismissed. If the case is dismissed, funds are returned to the individual. If the case results in a conviction, the District Attorney's Office posts public notices seeking public interest in the forfeited funds. When the distribution of forfeiture order is complete and the cost incurred by the sale or storage of the property has been reimbursed, the District Attorney notifies the Auditor/Controller that the Trust Account should be closed and all remaining funds be distributed.

Funds held are distributed per Section 11489 of the Health and Safety Code as follows and as shown on the attached flow chart:

- 1 65% to the state, local or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency. In Napa County, the Napa Special Investigations Bureau (NSIB) is the agency that typically seizes property. Section 11495 of the Health and Safety Code requires that funds received by law enforcement agencies shall be deposited into an account maintained by the Auditor/Controller and distributed to the law enforcement agency at their request. Since NSIB is composed of several law enforcement agencies, the NSIB bylaws dictate that the funds held in this special account shall be disbursed at the end of each fiscal year and according to the agreed upon percentages. If funds are allocated to Napa County law enforcement agencies (i.e. Probation, Sheriff), those funds are transferred to separate Trust Accounts under the Department's name and held there until the

Department requests disbursement. The Health and Safety Code also requires 15% of the 65% (or 9.75% of the grand total of funds) be deposited into a special account that is to be used to fund programs designed to combat drug abuse and divert gang activity. The actual distribution of these special funds is to be determined by a panel consisting of the Sheriff, a police chief selected by the other chiefs in the county, the District Attorney and the Chief Probation Officer. The Auditor/Controller's Office deposits 55.25% of the funds into the NSIB Trust Account for distribution to agencies participating in NSIB per the Governing Board's bylaws and 9.75% of the funds to the NSIB Community Service Trust Account to meet the legal requirement of allocating 15% of the 65% distributed to the law enforcement agency participating in the seizure for programs designed to combat drug abuse and divert gang activity. Funds were not allocated from the NSIB Community Service Trust Account in Fiscal Year 2006-2007.

- | 10% to the prosecutorial agency which processes the forfeiture action.
- | 24% to the California State General Fund. The State is required to make a portion of the funds collected from all Counties available for school safety and security, upon appropriation by the Legislature.
- | 1% to a private nonprofit organization composed of local prosecutors which shall use these funds for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement officers in ethics and the proper use of laws permitting the seizure and forfeiture of assets. The nonprofit currently functioning in this capacity is the California District Attorney's Association.

Any interest earned while funds are held in trust are distributed according to the percentages listed in Section 11489 of the Health and Safety Code.

An Attorney General opinion on the use of asset forfeiture funds by local law enforcement and prosecutorial agencies states that asset forfeiture funds may not be used to supplant funding for activities that the Board of Supervisors would otherwise be required to fund with County General Funds. However, the opinion states that the Board of Supervisor's does maintain responsibility for budgeting and approving expenditures from asset forfeiture funds. Funds have been used to cover costs including: special equipment purchases, unbudgeted overtime for staff related to NSIB activities and to provide local non-profits funds to purchase special equipment. Staff will begin developing a policy and procedure for seeking Board approval for use of asset forfeiture funds.

Action Requested for Distribution of Asset Forfeiture Funds from the NSIB Trust Account

The following asset forfeiture funds were paid on behalf of Napa County or deposited to Napa County Trust Accounts in Fiscal Year 2006-2007:

1. Napa Special Investigations Bureau Trust Account-\$86,468.06
2. Napa Special Investigations Bureau Community Services Trust Account-\$16,281.45
3. Napa County District Attorney's Asset Forfeiture Trust Account-\$17,047.69
4. California State General Fund-\$37,541.93
5. California District Attorney's Association-\$1,564.23

The dollar amounts listed above may not exactly match the disbursement percentages shown in Health and Safety Code Section 11489. Asset forfeiture funds can be distributed across many jurisdictions and the seizing law enforcement agency may not be from the same jurisdiction as the prosecuting agency. For example, NSIB may receive funds for assisting in a seizure that occurred in and was therefore prosecuted in Solano County.

The current balance of the Napa Special Investigations Bureau Trust Account (which includes funds received in FY2006-07 as well as funds received but not distributed in prior years) is \$167,596.39. The Napa Special Investigations Bureau (NSIB) Governing Board requests distribution of asset forfeiture funds and interest held in trust in the amount of \$140,394 to distributed as follows per the NSIB bylaws:

1. Napa Sheriff's Department Asset Forfeiture Trust Account- \$58,265 (41.5%)
2. Napa Police Department- \$32,993 (23.5%)
3. Bureau of Narcotic Enforcement-\$15,443 (11%)
4. St. Helena Police Department-\$12,635 (9%)
5. Calistoga Police Department-\$12,635 (9%)
6. Napa Probation Department Asset Forfeiture Trust Account- \$8,424 (6%)

SUPPORTING DOCUMENTS

A . Flow Chart

CEO Recommendation: Approve

Reviewed By: Molly Rattigan