

PROPERTY FORFEITURE FOR DRUG VIOLATIONS

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Senate Bill 750 (Substitute H-2)

Sponsor: Sen. John Pappageorge

House Committee: Intergovernmental and Regional Affairs

Senate Committee: Judiciary

First Analysis (3-17-10)

BRIEF SUMMARY: Senate Bill 750 (H-2) would amend Article 7 (which concerns Controlled Substances) of the Public Health Code to do the following in regard to the forfeiture of real property for controlled substance violations:

- Allow a seizing agency to request expedited proceedings on the grounds that a building or structure constituted a health or safety hazard and the agency intended to demolish it.
- Require local units of government to provide both written and personal notice of forfeiture and expedited hearings for both owners and occupants of property that is scheduled to be forfeited.
- Allow a local unit of government to demolish forfeited real property, preserve it for historic purposes, convert it to a park, or convey it to the state, a local unit, or a nonprofit entity for specific purposes.
- Require a local unit's annual report of forfeiture activities to include information about real property disposed of by those methods.

FISCAL IMPACT: Senate Bill 750 (H-2) would have an indeterminate, but likely negligible fiscal impact on state and local government. The provisions of the bill would provide for an expedited process relating to the demolition of structures when the property was forfeited due to a drug offense. The costs associated with demolition of the property and the revenue received from disposal of the property would presumably be the same under the provisions of the bill. However, the costs incurred and the revenue received would both come about at an earlier date under the expedited process provided for under the bill.

THE APPARENT PROBLEM:

Under the Michigan Public Health Code, the state and local units of government may seize and dispose of property that is used to commit or facilitate criminal offenses involving controlled substances. The process, known as forfeiture, applies to both personal and real property, including residential property.

The Public Health Code outlines a procedure that a seizing agency may use to forfeit property under certain circumstances; otherwise, a forfeiture action must be filed in court.

When property is forfeited, the local governmental unit where the property is located, or the state may retain it for official use; sell it and use the proceeds for drug-related law

enforcement activities; or transfer it to the Michigan Board of Pharmacy or the U.S. Drug Enforcement Administration.

When the forfeited property is a drug house, however, or other real property, it has been suggested that the best course of action might be demolition or, if the property is habitable or salvageable, conveyance to a nonprofit agency. These are both methods of disposal that the Public Health Code does not now authorize.

Legislation has been introduced to make possible demolition of the property, or conveyance to a nonprofit agency. The legislation would also ensure notice to those who own and occupy the forfeited properties, as well as allow a seizing agency to request expedited proceedings if the buildings are unsafe and need to be demolished.

THE CONTENT OF THE BILL:

Senate Bill 750 (H-2) would amend Article 7 (which concerns Controlled Substances) of the Public Health Code to do the following in regard to the forfeiture of real property for controlled substance violations:

- Allow a seizing agency to request expedited proceedings on the ground that a building or structure constituted a health or safety hazard and the agency intended to demolish it.
- Require local units of government to provide both written and personal notice of forfeiture and expedited hearings for both owners and occupants of property that is scheduled to be forfeited.
- Allow a local unit of government to demolish forfeited real property, preserve it for historic purposes, convert it to a park, or convey it to the state, a local unit, or a nonprofit entity for specific purposes.
- Require a local unit's annual report of forfeiture activities to include information about real property disposed of by those methods.

Expedited Proceeding

The bill would allow a seizing agency to request expedited proceedings on the ground that a building or structure subject to forfeiture constituted a health or safety hazard and the agency intended to demolish it upon forfeiture. A request for expedited proceedings could be filed at any time during the forfeiture proceedings but only with the approval of the attorney general or the county prosecuting attorney. If a request were filed, the court would have to conduct and conclude the forfeiture proceedings before all other cases not having priority by statute. Each party with an ownership, possessory, or secured interest in the building or structure would have to be notified of the expedited proceedings and given an opportunity to be heard regarding forfeiture.

If the court ordered property to be forfeited, the order could provide for immediate demolition of the building or structure at the discretion of the seizing agency, subject only to a stay of proceedings pending an appeal. If any real property were to be sold or transferred by the seizing agency to another entity after forfeiture, the court also could,

with the approval of the attorney general or the county prosecuting attorney, enter an order authorizing the seizing entity to execute the necessary documents at the time of forfeiture to complete that sale or transfer.

Notice of Forfeiture and Expedited Hearing

For the property subject to an expedited hearing, the foreclosing governmental unit must initiate a search of records to identify the owners who are entitled to notice of the forfeiture proceedings. The unit of government may enter into a contract with one or more authorized representatives to perform title searches, and identify the owners having a property interest.

After conducting the search of records, the local unit of government (or its authorized representative) would be required to determine the address reasonably calculated to apprise owners of the forfeiture hearing, and send notice of the hearing to them by certified mail, return receipt request, not less than 30 days before the hearing. If unable to determine an address, or if the notice was returned undelivered, the bill sets out reasonable steps that must be taken to ascertain the addresses of those entitled to notice. Those steps include searches of county probate court records; the qualified voter file; the county clerk's partnership records; and business records filed with the Department of Labor and Economic Growth.

Further, a local unit of government (or its authorized agent) would be required to make a personal visit to each parcel of property subject to an expedited forfeiture proceeding in order to ascertain whether or not the property is occupied. The bill then describes how the local governmental unit must proceed if the property is occupied, including (a) personal service of notice; (b) orally informing the occupants they will be required to vacate; and (c) notifying the Department of Human Services if the occupant lacks the ability to understand the advice given, or providing the occupant with the names and telephone numbers of assistance agencies. Further, if the local unit of government (or its authorized representative) is not able to personally meet with the occupant, then a notice must be placed in a conspicuous manner that explains in plain English that the property will be forfeited. That notice must also provide the names, addresses, and telephone numbers of agencies or other resources that can assist the occupant to avoid loss of the property. The bill specifies that if the state is the foreclosing governmental unit within a county, then the Department of Treasury would be required to perform the personal visit to each parcel of property.

Senate Bill 750 (H-2) specifies that if a local unit of government (or its authorized representative) discovered any deficiency in the provision of notice, then they would be required to take reasonable steps to correct that deficiency, not later than 30 days before the forfeiture hearing.

If the local unit of government was unable to ascertain the address to apprise the owners of forfeiture notice, or unable to notify an owner of a property interest, then the notice would have to be made by publication for three successive weeks (once each week), in a newspaper published and circulated in the county in which the property was located. If

there were no newspaper published in the county, publication would have to be made in an adjoining county.

Under Senate Bill 750 (H-2), the owner of a property interest is entitled to notice of the forfeiture hearing if that owner's interest is identifiable by reference to any of the following sources: land title records in the office of the registrar of deeds; tax records in the office of the county treasurer; tax records in the office of the local assessor; or tax records in the office of the local treasurer.

The notice of forfeiture would have to include all of the following: the date on which the property was seized by the local unit of government; a statement that the person notified may lose his or her interest in the property as a result of the forfeiture proceedings; a legal description or parcel number of the property and the street address of the property, if available; the person to whom the notice is addressed; the date and time of the forfeiture hearing; and a statement that, if the property was ordered forfeited, the title to the property would vest absolutely in the local unit of government and that all existing interests in oil and gas in that property would be extinguished with a few exceptions, noted in the bill.

Senate Bill 750 (H-2) also describes in detail the required elements that must be included in the published notice.

The bill specifies that the failure of the local unit of government to comply with any provision of this section would not invalidate any proceeding under this act, if the owner of a property interest was accorded the minimum due process required under the state and federal constitutions.

The bill defines "authorized representative" to include all of the following: (a) a title insurance company or agent licensed to conduct business in Michigan; (b) an attorney licensed to practice law in Michigan; (c) a person accredited in land title search procedures by a nationally recognized organization in the field of land title searching; and (d) a person with demonstrated experience searching land title records, as determined by the foreclosing governmental unit.

Finally, Senate Bill 750 (H-2) specifies that the provisions of this section relating to notice of the forfeiture hearing are exclusive and exhaustive. Other requirements relating to notice or proof of service under other law, rule, or legal requirement would not be applicable to notice and proof of service under this section.

Disposal Options

Under Article 7, when property is forfeited, the local unit of government that seized it or the state, as applicable, may retain it for official use, sell property that is not required by law to be destroyed and is not harmful to the public, require the Michigan Board of Pharmacy to take custody of the property and remove it for disposition, or forward it to the U.S. Department of Justice's Drug Enforcement Administration for disposition.

Under the bill, if real property were forfeited, the local unit of government that seized the property also could dispose of it by doing any of the following with the consent of the attorney general or the county prosecutor:

- Demolish the property.
- Preserve the property for historic purposes.
- Convert the property to a park or natural area.
- Convey the property to the state, a local unit of government, or a nonprofit entity for any of the purposes listed below.

Forfeited real property could be conveyed for use as a facility in which to do any of the following:

- Provide substance abuse treatment and rehabilitation services.
- Provide drug resistance education or crime prevention education.
- Provide job training skills to members of the community.
- Provide housing to individuals within the community who were displaced due to drug crime.

These provisions would not prohibit the local unit of government that seized the property from disposing of it in any other manner authorized under Article 7.

Annual Forfeiture Report

Under Article 7, before February 1 each year, every local unit of government that had forfeiture proceedings pending in the circuit court, forfeited property without a forfeiture proceeding, or received anything of value from the disposition of forfeited property during the local unit's preceding fiscal year, must submit a report to the Office of Drug Agencies for analysis and transmittal to the secretary of the Senate and the Clerk of the House of Representatives.

The report must summarize the local unit's activities regarding the forfeiture of property for the fiscal year, and must contain specified information. Under the bill, the report also would have to contain a statement of all real property disposed of under the provision described above (allowing demolition, preservation, conversion, or conveyance), the means of disposal, the total value of the property, and, if the property were being used for an authorized purpose, the nature of that use.

MCL 333.7523-333.7524a

HOUSE COMMITTEE ACTION:

The House Committee on Intergovernmental and Regional Affairs reported out an (H-2) substitute for the Senate-passed version of the bill. Senate Bill 750 (H-2) includes a new section that would require local units of government who are seizing property to provide written and personal notice to both owners and occupants of property that is scheduled

for forfeiture. See the provisions labeled *Notice of Forfeiture and Expedited Hearing* in the Content section of the analysis.

ARGUMENTS:

For:

The forfeiture of drug houses and other buildings substantially connected with drug offenses does not alleviate all of the problems involved with the property, and may lead to additional problems. If the buildings cannot be sold, torn down, or put to a good use, they remain a venue for criminal activity and a blight on the neighborhood. At the same time, the seizing agency becomes liable for taxes, insurance, and personal injury. The bill would address these issues in two ways: by providing for expedited forfeiture proceedings, and by expanding the options for disposing of forfeited property.

The provisions for expedited proceedings would apply when a building presented a threat to health or safety and the seizing agency intended to demolish it upon forfeiture. A request for expedited proceedings would have to be approved by the attorney general or county prosecutor, and the court could order immediate demolition of the building if the property were forfeited. The court also could execute documents for the sale or transfer of the property by the seizing agency. These provisions would help prevent situations in which seized property sits vacant and continues to deteriorate. An expedited forfeiture action would take precedence over other cases that did not have priority by law, and would accelerate the demolition of hazardous structures.

In addition to allowing buildings to be torn down, the bill would allow real property to be disposed of in beneficial ways. These would include conveyance to a nonprofit entity that could use the property for housing, job training, substance abuse treatment and rehabilitation, or drug resistance or crime prevention education. If a drug house were habitable or salvageable, it could be conveyed to Habitat for Humanity, for example, and refurbished as housing for individuals displaced by drug crime.

Against:

Drug houses are commonly rental property owned by people who might not be living in the community or even in the state. The condition of a house that would be torn down might be the result of neglect. The bill might go too far by allowing an expedited proceeding that could result in demolition, especially since the standard of proof in forfeiture actions is probable cause and the burden is on the property owner to demonstrate that the property is not forfeitable.

Response:

A property owner would be afforded notice and due process, as owners are under current law. Notice would have to be given and the owner would have an opportunity to make a case in court that the property was not subject to forfeiture. As always, the court would make the decision whether to order forfeiture. Since the action would not languish in court, expedited proceedings actually could benefit property owners.

POSITIONS:

The Michigan Municipal League supports the bill. (3-16-10)

The Michigan Townships Association supports the bill. (3-16-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.