

# Legislative Analysis

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## **CONTROLLED SUBSTANCES ACT: SEIZED AND FORFEITED PROPERTY**

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**House Bill 5213 (as reported without amendment)**

**Sponsor: Rep. Marie Donigan**

**Committee: Intergovernmental and Regional Affairs**

**BRIEF SUMMARY:** The bill would allow for the expedited disposition of forfeited real property, and provide that seized property could be preserved for historic purposes, converted to a park or natural area, demolished, or conveyed to the state, a local government, or a nonprofit to be used to provide substance abuse treatment, drug resistance education, job training skills, or used as housing for those in the community who are displaced due to drug crime.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the judicial branch. Expediting proceedings related to forfeiture of property would not necessarily have any fiscal impact on the judiciary; however, there may be minimal administrative cost increases. Also, local units of government may realize a positive fiscal impact from the increased disposition of real property alternatives offered in the bill.

### ***THE APPARENT PROBLEM:***

Nearly 400 abandoned houses in the City of Pontiac have been boarded up, yet many serve as the headquarters for local and national gang activity as attested by gang-related graffiti and drug sales, according to the Oakland County Prosecutor, Jessica Cooper. The prosecutor reports a 30 percent increase in serious narcotics crime in Oakland County in the last year. Similar criminal activity has occurred along the U. S. 1-75 corridor.

Abandoned houses pose a serious threat to the health and safety of whole neighborhoods. There is a risk of violent crime as rival gangs and criminals steal from drug houses. And children playing nearby do so amid imminent dangers.

When the drug houses are shut down and seized (following real property forfeiture protocols established in law), the city or county becomes responsible for overdue water, sewerage, and utility fees, as well as for any outstanding property tax liability.

Officials in Oakland County want to speed up the forfeiture process in the circuit court, in order to get expedited orders to demolish the properties. Or, if the houses have value and can be saved, then the courts could donate them to local nonprofit agencies such as Habitat for Humanity for refurbishing.

Legislation has been introduced to allow judges to make the disposition of abandoned houses a priority--either to demolish them, or to use them for charitable purposes. That way, community leaders hope to rebuild and stabilize neighborhoods, and stop or slow narcotics trafficking.

## ***THE CONTENT OF THE BILL:***

House Bill 5213 would amend the Controlled Substances Act, which forms Article 7 of the Public Health Code to address the seizure and forfeiture of property by the state or a local unit of government related to the violation of state drug laws.

### **Expedited Proceedings**

The bill would amend Section 7523, which delineates the procedures used in administrative forfeiture proceedings, to allow a seizing agency to request expedited proceedings on the grounds that a building or structure subject to forfeiture constituted a health or safety hazard, and that the seizing agency intended to demolish the building or structure upon forfeiture. A request for expedited proceedings could be filed at any time during the forfeiture proceedings, but would need the approval of the county prosecuting attorney or the state attorney general. If a request was filed for expedited proceedings, then the court would be required to conduct and conclude the forfeiture proceedings before all other cases not having priority by statute.

Under the bill, each party having an ownership, possessory, or secured interest in the building or structure would have to be notified of the expedited proceedings, and then be provided with an opportunity to be heard regarding forfeiture.

If the court ordered property to be forfeited, then the order could also 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, then the court could also, with the approval of the county prosecuting attorney or state attorney general, execute the necessary documents at the time of forfeiture to complete that sale or transfer.

### **Disposition of Forfeited Real Property**

The bill would amend Section 7524, which deals with the disposition of forfeited real property, to specify that if real property were forfeited, then the local unit of government that seized the property could dispose of the property by doing any of the following (with the consent of the county prosecuting attorney or the state attorney general):

- Preserve the property for historic purposes.
- Convert the property to a park or natural area.
- Demolish the property.
- Convey the property to the state, a local unit of government, or a nonprofit entity for any of the following purposes:
  - use as a facility in which to provide substance abuse treatments and rehabilitation services.
  - use as a facility in which to provide drug resistance education or crime prevention education.

- use as a facility in which to provide job training skills to members of the community.
- use as a facility to provide housing to individuals within the community who are displaced due to drug crime.

The bill says that this new provision would not prohibit a local unit of government from disposing of the property in any other manner authorized by the Controlled Substances Act.

**Record-Keeping Requirements**

The bill would amend Section 7534a, which deals with the record-keeping requirements that seizing agencies must follow when they have obtained forfeited property or have pending forfeiture proceedings. Currently under the law, each local unit of government that begins forfeiture proceedings in the local circuit court 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 annual report provides a summary of the local unit of government's forfeiture activities, following content guidelines set out in statute. The bill would retain these provisions but add a subsection to require that the annual report include "a statement of all real property disposed of under [the new disposal provisions described above], the means of disposal, the total value of the property, and if the property was being used for an authorized purpose, the nature of that use."

MCL 333.7523 et al)

**ARGUMENTS:**

**For:**

This bill would allow city officials, county prosecutors, and circuit court judges to expedite the procedure they now used to seize the properties that create safety hazards in a neighborhood--for example, abandoned houses commandeered by those who sell and use illegal drugs. According to testimony offered by the Oakland County prosecutor, under the bill the disposition of seized property could be completed in three months instead of the customary six months, or more. Once seized, properties could be demolished if they were eyesores or posed safety hazards. Or in the alternative, seized houses that retained some value could be put to new uses by, among others, local nonprofit organizations that provide low-income housing, or offer drug treatment programs. As the Oakland County prosecutor puts it: "Let local prosecutors recycle ill-gotten gains; let us shut down drug houses."

**Against:**

Some opponents to laws that expedite the forfeiture of real property argue that property owners may lose their property rights if local officials move too fast to seize property.

**Response:**

Forfeiture processes and protocols are established in law, and are followed by the courts. This legislation does not deny the rights of property-holders, but rather seeks to hasten

the disposition of property such as the drug houses that pose a health and safety hazard in many of Michigan's urban communities.

***POSITIONS:***

The Oakland County Prosecutor supports the bill. (9-1-09)

The Michigan State Police are neutral on the bill. (10-13-09)

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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.