

Legislative Analysis



DRUG FORFEIT CONTRIBUTIONS: ALLOW FOR ANY LAW ENFORCEMENT PURPOSE

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House Bill 4349 (Substitute H-2)

Sponsor: Rep. Kurt Heise

Committee: Judiciary

First Analysis (4-8-11)

BRIEF SUMMARY: The bill would allow the proceeds obtained from the sale of property forfeited for crimes involving controlled substances to be used for any law enforcement purpose rather than only for law enforcement related to controlled substances violations.

FISCAL IMPACT: The bill would have no fiscal impact on state or local revenues or expenditures. It does, however, expand the allowable use of revenues derived from property forfeitures under the state's controlled substances statutes by allowing their use for any law enforcement purpose, rather than law enforcement purposes pertaining to controlled substances.

THE APPARENT PROBLEM:

Provisions of the Public Health Code allow local law enforcement agencies to seize property such as cars, houses, jewelry, and cash used in the commission of crimes or that are the profits of crimes related to controlled substances (heroin, cocaine, LSD, and so on). There are some circumstances under which the owner of the seized property can reclaim the property; for instance, if the owner of the property had no part in the crime. Otherwise, the law enforcement agency that seized the property is allowed to keep and use it for official purposes or sell it. If the property is sold, statute details how the proceeds of the sale (as well as securities, negotiable instruments, and money that were seized) are to be used. After certain expenses are covered, the remaining proceeds are divided among the law enforcement agencies involved in the seizure. By law, these proceeds, and any interest generated by those proceeds, can only be used for law enforcement efforts related to enforcement of the drug laws.

According to committee testimony, some communities have amassed quite a bit of money from drug-related property seizures that is now sitting in these restricted funds. In this day of continuing cuts to revenue sharing and decreases in property taxes, some local governments would like to use money in these restricted funds for other law enforcement purposes. Legislation has been offered to make the necessary changes to statute that would allow local officials to do so.

THE CONTENT OF THE BILL:

The bill would allow the proceeds obtained from the sale of property forfeited for crimes involving controlled substances to be used for any law enforcement purpose rather than only for law enforcement related to controlled substances violations.

Article 7 of the Public Health Code regulates the use of controlled substances and establishes penalties for violations. In addition to penalties, property seized in drug raids and criminal

investigations may be subject to forfeiture—meaning that the local government that seized the property may retain it for official use, sell that which is not required to be destroyed by law and is not harmful to the public, require the Michigan Board of Pharmacy to take custody of any seized property and remove it for lawful disposition, or forward it to the federal Drug Enforcement Administration. When a local government sells seized property, the money must be used to pay the expenses incurred by the sale (such as advertising costs), with the balance going to the entities involved in the seizure. Currently, a seizing agency is required to use this money to enhance law enforcement efforts pertaining to violations involving controlled substances, as appropriated by the entity having budgetary authority over the seizing agency.

The bill would amend Part 75 of Article 7 of the Public Health Code (MCL 333.7524), entitled "Enforcement and Administration," to instead require a seizing agency to use the money obtained from forfeiture proceedings relating to controlled substance violations only for law enforcement purposes, as appropriated by the entity having budgetary authority over the seizing agency. (Property subject to seizure and forfeiture sales may include money, negotiable instruments, cars, planes, boats, houses, and land.)

The bill would also revise a provision enacted by Public Act 336 of 1990 that specifies that a distribution of forfeited funds is to serve as a supplement to, and not a replacement for, funds budgeted on January 1, 1991, for law enforcement efforts pertaining to Article 7. Instead, the bill would specify that the distribution would have to serve as a supplement to, and not a replacement for, the funds otherwise budgeted for law enforcement purposes.

ARGUMENTS:

For:

First, it is important to note what the bill is about, and what it is not about. The bill would not revise in any way the laws regarding property subject to forfeiture or the forfeiture process. The bill only impacts how local governments can use distributions from the proceeds of forfeited property. Instead of being restricted to law enforcement purposes relating to crimes involving drugs such as narcotics and hallucinogens, the funds could be used for any law enforcement purposes. Thus, the funds could be used for such things as equipment, training, or education related to enforcing other laws. By some arguments, all law enforcement officers enforce drug laws in the course of their daily job duties. Therefore, providing flexibility for local officials to expend these funds on other programs or purchase equipment that supports overall law enforcement efforts is not detracting from drug enforcement.

Against:

The H-2 version of the bill is an improvement over the bill as introduced, but is still seen as being problematic. As introduced, the bill would have allowed local governments to use distributions from the proceeds of drug-related forfeitures as a discretionary revenue source to replace annual appropriations for their law enforcement agencies (e.g., wages and benefits), thus freeing up money for other municipal needs. This would not have been prudent in the long term, as forfeiture money is an unpredictable source of revenue from year to year. Moreover, according to those in law enforcement, forfeiture funds are used to equip and train officers in enforcing drug laws and protecting communities from the dangers posed by illegal drugs; for instance, violent crimes, drive-by shootings, gang activity, and even terrorist activity associated with drug trafficking.

The committee substitute does specify that these funds are to supplement, and not act as a replacement for, funds otherwise budgeted by local governments for law enforcement purposes. However, a concern remains that since these funds would no longer be restricted to drug enforcement, but could be siphoned off for other purposes, the bill could have long-term, negative implications on narcotics investigations and narcotics enforcement efforts. In addition, it is not clear what would constitute a legitimate "law enforcement purpose" and so could lead local governments to try to expand the uses for which these funds could be used beyond what is envisioned today.

Against:

Though the bill does not directly revise the drug forfeiture law, some see it as encouraging more forfeitures. Across the nation, as well as in Michigan, forfeitures are on the rise. Some fear that the ongoing recession and reductions in property taxes are driving local governments to supplement shrinking revenue streams through the exercise of forfeiture laws. After all, seizure of property can be done solely upon arrest and charges being filed. Even if a person is acquitted or charges dismissed, he or she must pay fees to reclaim the property, which is burdensome for low-income individuals, who may not be able to afford to redeem a home, a vehicle, or other property.

Some contend that certain drug raids are planned not on the basis of the type or amounts of drugs expected to be on the premises, but on the value of personal property that could be seized and forfeited on allegations of being bought with drug money. Therefore, there is a concern that the bill may encourage more drug raids by officers eager to shore up forfeiture revenues now that the funds can be used for non-drug related activities.

POSITIONS:

The Michigan Township Association indicated support for the bill. (3-24-11)

The Michigan State Police indicated a neutral position on the bill. (3-24-11)

The Michigan Association of Chiefs of Police supports the bill as reported from committee, but still has concerns regarding the long-term implications for narcotics investigations and enforcement.

A representative of the Midwest Cultivator testified in opposition to the bill. (3-24-11)

A representative of the Mackinac Center testified in opposition to the bill. (3-24-11)

A representative of the Michigan Association of Compassion Centers testified in opposition to the bill. (3-10-11)

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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.