

Legislative Analysis



REPORTING FORFEITED PROPERTY

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House Bills 5081 & 5250

Sponsor: Rep. Tom McMillin

House Bill 5251

Sponsor: Rep. Rose Mary C. Robinson

House Bill 5252

Sponsor: Rep. Mike Callton, D.C.

1st Committee: Criminal Justice

2nd Committee: Oversight (referred 4-30-14)

Complete to 5-6-14

A SUMMARY OF HOUSE BILLS 5081 & 5250-5252 AS INTRODUCED 10-16-13

The bills would modify the laws in Michigan that govern the forfeiture of property following criminal activity. Generally speaking, the bills would require local and state law enforcement agencies to report on a monthly basis to the Department of State Police on property seized by or forfeited to the agency.

House Bill 5250 creates a new act containing reporting requirements, and House Bill 5081 puts similar reporting requirements in the Revised Judicature Act. House Bill 5251 would amend the Public Health Code to require reporting and auditing as required under the new act created by House Bill 5250. House Bill 5252 would put those same provisions in the RJA.

House Bills 5250, 5251, and 5252 are tie-barred to each other, and also to House Bill 5081, so that House Bills 5250, 5251, and 5252 could not go into effect unless all of the bills were enacted into law. A description of each bill follows.

House Bill 5250

The bill would create a new act to be known as the Uniform Forfeiture Reporting Act.

Under the new act, beginning February 1, 2014, each reporting agency (either a local government or a state agency) would have to report information on a monthly basis to the Michigan State Police about all property seized by or forfeited to the agency under the Revised Judicature Act. These requirements are described in 21 separate categories found on pages 2, 3, and 4 of the bill.

The information includes, among other things:

- The number of forfeiture proceedings instituted in court by the recording agency, the number concluded; and the number pending at the end of the year.
- The number of forfeitures accomplished without filing a forfeiture proceeding in circuit court;

- The violations/crimes committed for which forfeiture was authorized;
- The date the property was seized;
- Whether the person charged with the violation/crime was convicted, or was convicted of any other violation/crime arising out of the same criminal transaction;
- A description of the property that was seized;
- A description of any property that was forfeited;
- Whether the forfeiture was subject to a plea or any other agreement;
- Whether the property owner was represented by an attorney in the forfeiture proceedings;
- The value of the property seized, and the means by which that value was obtained;
- The value of the property forfeited;
- Whether the property was subject to a security interest or ownership by any other person;
- If a firearm was seized or forfeited, its make, model, and serial number;
- The final disposition, including use by the seizing agency (the state or a local unit), of all property seized, and all property forfeited. (The information reported would have to include all administrative and other expenses deducted from the forfeiture proceedings and the net amount received from the forfeiture);
- The date the property was disposed of;
- Whether any property that was seized or forfeited was subsequently ordered to be returned to an owner;
- Whether the forfeiture resulted from an "adoptive seizure" (which is defined in the bill on page 3);
- Information regarding the nature of the expenditure of funds obtained in all forfeiture actions, including the total amount of funds expended in each of 13 categories described in the bill on page 4; and,
- Any other information considered to be appropriate by the Department of State Police.

House Bill 5250 specifies that the reporting requirements (noted above) would apply to property seized by or forfeited on or after the effective date of this bill (if it were enacted into law), and to all forfeiture proceedings pending on that effective date.

The bill requires that a reporting agency file separate reports for forfeitures under state and federal law. Further, a null report would be required if a reporting agency did not engage in any seizures or forfeitures during the reporting period.

Under the bill, the Department of State Police may charge a fee to reporting agencies to cover the actual costs to the department for implementing the act. Further, a reporting agency could use forfeiture proceeds to pay the cost of compiling and reporting data, including any fee imposed by the State Police. The MSP could withhold the payment of any law enforcement funds to a reporting agency that failed to comply with the act's reporting requirements.

Records of a reporting agency would have to be audited in accord with either Public Act 71 of 1919 (the uniform system of accounting for counties) or The Uniform Budgeting and Accounting Act. Further, the records of a reporting agency could be audited by an auditor of the local unit of government.

The State Police would be required to analyze and compile the information reported to them, and then file an annual report of its findings (before February 1) with the Secretary of the Senate, and with the Clerk of the House of Representatives, and also place a copy of the report on the department's website. The annual report would have to identify any withheld funds, and offer recommendations to improve the administration and fairness of the forfeiture process.

The bill defines "reporting agency" to mean one of the following: (1) if property is seized by or forfeited to a local unit of government, that unit of government; or (2) if property is seized by or forfeited to this state, the state department or agency effectuating the seizure or forfeiture.

House Bill 5250 would repeal Section 7524a of the Public Health Code (MCL 333.7524a), which describes the forfeiture protocol currently used by state officials.

House Bill 5081

The bill would amend the Revised Judicature Act (MCL 600.4710) to require the reporting of certain forfeited property by law enforcement agencies, and also to set a penalty for failing to do so. Essentially, it contains the same reporting requirements found in House Bill 5250.

Similar to the provisions of HB 5250, a law enforcement agency must file separate reports for forfeitures under state and federal law, and a null report would have to be filed if the agency did not engage in seizures or forfeitures during the reporting period. The MSP could charge a fee to law enforcement agencies to cover the actual costs to the department for implementing these reporting requirements; and a law enforcement agency could use forfeiture proceeds to pay the cost of compiling and reporting data under this section, including any fee imposed by the State Police. Also, the MSP could withhold the payment of any law enforcement funds to a law enforcement agency that failed to comply with the reporting requirements.

The bill also includes the requirement (as found in HB 5250) that the State Police analyze and compile the information reported, and file an annual report of its findings with the Secretary of the Senate, and also with the Clerk of the House of Representatives, and in addition, to place a copy of the report on the departmental website. The report would have to be filed no later than February 1 of each year, and it would have to identify any seizing agencies that had failed to properly report the information described above, as well as whether any funds were withheld due to an agency's failure to comply.

Finally, the bill also includes the requirement that the report must include the department's recommendations for improvements to the forfeiture process, including recommendations to improve the administration and fairness of forfeiture proceedings.

House Bill 5251

The bill would amend the Public Health Code (MCL 333.1101) to specify that beginning February 1, 2014, each reporting agency must report all seizure and forfeiture activities under the code to the State Police, as required under the Uniform Forfeiture Reporting Act. Further, beginning February 1, 2014, each reporting agency would be subject to audit, as required under the Uniform Forfeiture Reporting Act.

House Bill 5252

The bill would amend the Revised Judicature Act (MCL 600.3841) to put the same requirements in that act as found in House Bill 5251.

FISCAL IMPACT:

State Impact: The bill would increase costs to the Michigan Department of State Police (MSP) to process, compile, and report the additional information required to be submitted under the bills. Under the controlled substances provisions of the Public Health Code, the MSP Grants and Community Services Division (GCSD) already compiles an annual report regarding drug forfeitures.¹ While these bills would continue to require an annual report, the information submitted to MSP-GCSD is more expansive, applies to seizures and forfeitures under Chapters 38 and 47 of the Revised Judicature Act, and must be submitted monthly. This would require additional staff time and resources for MSP-GCSD. For MSP, however, the bills provide that MSP's costs may be offset by fees charged to reporting agencies. This fee revenue could potentially offset some portion of the General Fund appropriations for the MSP-GCSD that support the portion of staff costs incurred in compiling the current asset forfeiture report.

MSP would also be affected to the extent that it receives forfeiture funds and would be subject to the additional reporting requirements. Again, current law requires agencies to provide an annual report on asset forfeiture funds to MSP only under the controlled substances provisions of the Public Health Code, whereas these bills require a monthly report on more information on drug forfeitures and forfeitures under Chapters 38 and 47 of the Revised Judicature Act. The bills provide that the costs of the fees paid to MSP and the costs for compiling the asset forfeiture report may be paid from the portion of forfeiture funds received. Any increased costs paid from forfeiture funds to comply with the expanded reporting requirements necessarily reduces the amount of those funds that may be used for other things, including personnel costs, vehicles, equipment, informant fees, buy money, training, and prevention services— i.e., those categories of expenditures on which the bill requires a report.

Additionally, the bills require ("shall") that reporting agencies be audited regarding the seizure and forfeiture of property. This could require MSP to hire additional staff to conduct these audits, although the act permits ("may") local auditors to conduct an audit

¹ http://www.michigan.gov/msp/0,4643,7-123-1593_34040_34043-224991--,00.html.

of these forfeitures. (MSP's 2013 asset forfeiture report indicates that 286 of 691 agencies submitted information indicating they expended forfeiture proceeds. Another 349 agencies submitted a null report indicating they did not engage in seizure or forfeiture, and 56 agencies did not submit a report at all.²)

Local Impact: Similar to the state impact noted above, the bills would increase the costs of local government agencies, including courts, police departments, sheriff's departments, and prosecuting attorneys, to comply with the expanded reporting requirements. Again, the controlled substance provisions of the Public Health Code only requires an annual report on drug forfeitures, while the bills would require monthly reports on more information to be reported on drug forfeitures as well as seizures and forfeitures under Chapters 38 of 47 of the Revised Judicature Act. (Section 4708 of the Revised Judicature Act already requires local units receiving forfeiture proceeds to submit an annual report to the Department of Technology, Management and Budget, although it isn't immediately known if that provision is currently complied with and enforced.)

Certain elements to be reported, such as whether charges were filed, whether the person was convicted, and the final disposition of the property that was seized or forfeited would seem to require "amended" reports to be filed, so that reporting agencies would file the basic monthly report and an accompanying addendum that updates information (e.g., a conviction) that was provided in earlier reports. These additional reporting requirements would impose potentially significant costs on reporting agencies, again as they would have to report more information on more types of forfeitures. In addition, reporting agencies would pay a fee to MSP to cover their administrative costs in compiling the information reported, with the amount of those fees as well as any costs incurred by the reporting agency to maintain, compile, and report the information required under the bills payable from forfeiture proceeds. Again, any increased costs paid from forfeiture proceeds to comply with the expanded reporting requirements under these bills necessarily reduces the amount of those funds that may be used for other things, including personnel costs, vehicles, equipment, informant fees, buy money, training, and prevention services, and other expenditures that further law enforcement efforts or crime victim support.³

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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.

² http://www.michigan.gov/documents/msp/2013_Asset_Forfeiture_Final_427690_7.pdf

³ Section 4708 of the Revised Judicature Act (MCL 600.4708) specifies that local units receiving forfeiture proceeds shall allocate 75% of any remaining amount (after payment of various costs) for the "enhancement enforcement of the criminal laws" and 25% to implement the Crime Victim's Rights Act. Additionally, Section 7524 of the Public Health Code provides that forfeiture proceeds shall be used, after the payment of various costs, for "law enforcement purposes."