

# Legislative Analysis

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## FORFEITED FUNDS

**House Bills 5490 and 5824 as enrolled**  
**Public Acts 128 and 130 of 2006**  
**Sponsor: Rep. David Law**

**House Bill 5823 as enrolled**  
**Public Act 129 of 2006**  
**Sponsor: Rep. William Van Regenmorter**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**

## Second Analysis (10-13-06)

**BRIEF SUMMARY:** The bills would allow law enforcement agencies to deposit funds seized in criminal investigations into interest bearing accounts until such time as the funds are either returned to the owner or forfeited to the government.

**FISCAL IMPACT:** By allowing seizing agencies to deposit seized money in interest-bearing accounts, and to dispose of that interest under the forfeiture law, the bills could increase revenues for the state and local units of government.

## **THE APPARENT PROBLEM:**

Michigan law provides for the confiscation and forfeiture to the government of property used in connection with drug dealing and crimes that include arson, bribery, burglary, embezzlement, larceny, securities fraud, Medicaid fraud, and distribution of obscene material to a minor. Though law enforcement agencies may seize property prior to a criminal trial (either subject to a warrant or without a warrant under limited circumstances), forfeiture proceedings cannot be instituted until after criminal conviction. From the time that personal property is seized until such time as it is returned to a victim or a defendant, or forfeited to the government, it remains in the custody of the seizing agency and may be placed under seal or removed to a place designated by the court.

Often, the property is kept in a locked and supervised property room maintained by the seizing law enforcement agency. Sometimes large sums of money are seized as part of investigations into illegal drug trafficking. According to a representative of the Oakland County Sheriff's Office, they once seized \$1.6 million in a drug bust. During the five years it took to adjudicate the case, the money just sat in the property room. Some believe that leaving such large sums of money in police property rooms pose a security threat and act as an enticement for theft or embezzlement by agency employees.

It has been suggested that instead of placing seized funds in caged property rooms, law enforcement agencies be allowed to deposit the funds in interest bearing accounts.

## ***THE CONTENT OF THE BILLS:***

The bills would place similar amendments in various acts to allow money subject to forfeiture and allowed to be seized under a court order to be deposited into an interest-bearing account in a financial institution. "Financial institution" would include a bank, savings and loan association, savings bank, or credit union whose deposits are federally insured and that maintain a principal office or branch office located within Michigan under the laws of this state or the United States.

An attorney for a person charged with a crime who had money seized under a court order would be afforded a period of 60 days within which to examine the money. The 60-day period would begin to run after the person had been notified of the seizure but before the money was deposited into a financial institution.

The bills would also require any interest earned on money deposited in a financial institution under the bills to be returned to the person if the attorney general, prosecuting attorney, or city or township attorney failed to sustain the required burden of proof that probable cause to believe the property was subject to forfeiture existed or that the property had been properly seized.

House Bill 5490 would place these provisions within the Revised Judicature Act (MCL 600.4703 et al.). In addition, the bill would specify that when property is forfeited, the unit of government that seized the property could dispose of the money and any interest earned from depositing it according to the list of priorities contained in the act.

(The act requires the seizing agency, or, in the case of real property, the attorney general, the prosecuting attorney, or the city or township attorney, to give notice of the seizure of property and the intent to forfeit and dispose of the property to certain persons. The notice must be given within seven days after the personal property had been seized.)

House Bill 5823 would place the provisions within several sections of the Michigan Penal Code (MCL 750.49, 750.159j, and 750.535a). Section 49 prohibits various activities relating to use of an animal for fighting or baiting, or as a shooting target. All animals being used or to be used in fighting, as well as equipment, devices, and money involved in a violation of the prohibited activities, must be forfeited to the state. All other instrumentalities, proceeds, and substituted proceeds of a violation are subject to forfeiture under Chapter 47 of the Revised Judicature Code.

House Bill 5824 would place the provisions within the Public Health Code (MCL 333.7523). Under Article 7 (Controlled Substances), certain property related to a violation of that article, including money, is subject to seizure and forfeiture.

## ***ARGUMENTS:***

### ***For:***

Storing large sums of cash in police property rooms poses a threat of break-ins and acts as an enticement for embezzlement for cash-strapped or unethical employees. Some feel that the bills provide a viable solution. The bills are permissive in nature, meaning that they don't require seized funds to be deposited into interest bearing accounts, but give law enforcement

agencies the option to do so. The benefits include protecting the money from theft, damage while being stored, or from being misplaced or lost, and the interest earned would generate extra revenue for law enforcement purposes if the funds were eventually forfeited or for the owner if the funds were ordered to be returned.

Revenue generated from the interest would be treated the same as forfeited funds – the balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses would go to the agency that seized the funds. Seventy-five percent of that amount is required to be used to enhance enforcement of the criminal laws and 25 percent is required to be used to implement the William Van Regenmorter Crime Victim's Rights Act. If the funds were ordered to be returned to the owner, the person would also receive the interest earned during the time the money was in police custody. The bills are good public policy benefitting law enforcement, the public, and owners who are able to recover their seized funds.

***For:***

The bills would require that a defense attorney for a person charged with a crime in connection with money seized under state law be afforded a reasonable amount of time – 60 days – within which to examine the money before it could be deposited into an interest bearing account. This would protect a defendant's due process rights.

***Response:***

This time period may not be sufficient. It is not uncommon for law enforcement agencies to drop charges against a person initially arrested and charged with a crime and arrest someone else, or to add additional defendants as an investigation proceeds. Once the money is deposited into a bank account, it can no longer be examined by a suspect's attorney for evidence linking a suspect to the crime or exonerating an innocent one. In light of the number of recent cases around the country in which persons convicted of crimes are exonerated at a later time, usually due to advances in technology, the bills should include a requirement that before money is deposited into a bank account, that it be thoroughly tested for evidence (i.e., fingerprints, contaminants, writing, hair, or blood) that could be used to prove a defendant's guilt or innocence and that a record of the findings, or the particular bills that contain the evidence, be maintained in police custody for use in the future by additional defendants or to uphold or overturn a conviction if challenged.

***Against:***

In civil cases, attorneys often have custody of settlements, money judgments, and other probated funds for a time that are pooled into trust accounts before being released to the rightful owners. Under ethics rules governing the conduct of lawyers, these funds must be kept in special accounts known as Interest on Lawyer Trust Accounts or IOLTA. Seventy percent of the interest earned on these accounts is designated by Supreme Court to support civil legal services for the poor.

Since it is likely that the interest bearing accounts established by law enforcement agencies under the bills would also pool funds from different criminal cases, something similar to the accounting mechanisms used in the IOLTA program should be established. It will be important to track the interest earnings for each case so that when funds are either forfeited to a law enforcement agency or returned to the rightful owner, that the appropriate amount of interest also be given. Also, under the IOLTA program, many banks and financial

institutions reduce or waive fees on the accounts so that more funds are generated for the legal services provided to the poor.

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