

Legislative Analysis



REPORTING FORFEITED PROPERTY

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5081 (Substitute H-3)

House Bill 5250 (Substitute H-2)

Sponsor: Rep. Tom McMillin

House Bill 5251 (Substitute H-1)

Sponsor: Rep. Rose Mary C. Robinson

House Bill 5252 (Substitute H-1)

Sponsor: Rep. Mike Callton, D.C.

1st Committee: Criminal Justice

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

Complete to 6-10-14

A SUMMARY OF HOUSE BILLS 5081 & 5250-5252 AS REPORTED FROM COMMITTEE 6-3-14

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 an annual 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 the same reporting requirements in the Revised Judicature Act. House Bill 5251 would amend the Public Health Code to require reporting and auditing as would be required under the new act created by House Bill 5250. House Bill 5252 would put those auditing 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 (Substitute H-2)

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

The new act would require each reporting agency (either a local government or a state agency) to report information on an annual basis to the Michigan State Police representing a summary of the reporting agency's activities for the fiscal year regarding the forfeiture of property under the Public Health Code, and the Revised Judicature Act. These requirements are described in 12 separate categories found on pages 2, 3, and 4 of the bill.

The annual report must include, 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 number of forfeiture proceedings subject to a plea or any other similar agreement involving the property owner and reporting agency;
- An inventory of property received by the reporting agency (categorized as residential, industrial, commercial, agriculture, and money or securities, weapons, motor vehicles and other conveyances, other personal property);
- A description of each property inventoried (including the date it was seized, its final disposition, its estimated value, the violation or nuisance alleged to have been committed, whether any person was ultimately convicted of that violation, the number of claimants to the property, whether the forfeiture resulted from an adoptive seizure (which is defined in the bill);
- The net total proceeds of all property forfeited to the reporting agency;
- For forfeiture proceedings instituted under the Public Health Code, a statement explaining how the money had been used to enhance law enforcement efforts pertaining to Article 7 of the Public Health Code, as well as the number and value of grow-lights and scales that were confiscated and then donated to schools, colleges, and universities;
- For nuisance proceedings instituted under Chapter 38 of the Revised Judicature Act, a statement explaining how net proceeds were directed;
- For forfeiture proceedings instituted under Chapter 47 of the Revised Judicature Act, the amount of money received that was used to enhance enforcement of criminal laws, as well as the amount of money that was used to implement the Crime Victim's Rights Act; and,
- Any other information considered appropriate by the Department of State Police.

House Bill 5250 (H-2) specifies that subsection (1) of the new law would apply only to proceedings that began on or after the effective date of the act. Further, the bill specifies that subsection (1)(g) through (k) would apply only to proceedings that had been finalized for purposes of appeal.

The bill requires that a reporting agency file a 'null report' if a reporting agency did not engage in any seizures or forfeitures during the reporting period.

House Bill 5250 (H-2) also specifies that a reporting agency's forfeiture report would 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 compile the information reported to them, and then file an annual report of its findings (before July 1) with the Secretary of the Senate and 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 state departments or

agencies and local units of government that had failed to properly report the information required under Sections 2 and 3 of the proposed act.

The bill defines "local unit of government" to mean a village, city, township, or county. In addition, 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.

Finally, House Bill 5250 (H-2) 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 (H-2)

The bill would amend the Revised Judicature Act (MCL 600.4710) to require that beginning February 1, 2015, each reporting agency report all seizure and forfeiture activities under this chapter to the Michigan Department of State Police, as required under the Uniform Forfeiture Reporting Act (to be created by House Bill 5250).

The bill specifies that as used in this section of the Revised Judicature Act, the term "reporting agency" means that term as defined in Section 7 of the Uniform Forfeiture Reporting Act.

House Bill 5251 (H-1)

The bill would amend the Public Health Code (MCL 333.1101) to specify that beginning February 1, 2015, 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, 2015, each reporting agency would be subject to audit, as required under the Uniform Forfeiture Reporting Act. Finally, the bill specifies that as used in this section of the Public Health Code, "reporting agency" means that term as defined in Section 7 of the Uniform Forfeiture Reporting Act.

House Bill 5252 (H-1)

The bill would amend the Revised Judicature Act (MCL 600.3841) to require that beginning February 1, 2015, each reporting agency 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, 2015, each reporting agency would be subject to audit, as required under the Uniform Forfeiture Reporting Act. Finally, the bill specifies that as used in this section of the Revised Judicature Act, "reporting agency" means that term as defined in Section 7 of the Uniform Forfeiture Reporting Act.

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, and also applies to seizures and forfeitures under Chapters 38 and 47 of the Revised Judicature Act. It would require additional staff time and resources to compile this information, increasing GF/GP expenditures of MSP-GCSD.

MSP would also be affected to the extent that it receives forfeiture funds and would be subject to the additional reporting requirements. House Bill 5250 provides that a reporting agency (including MSP's criminal investigation activities) could use forfeiture proceeds to pay for any reasonable costs associated with compiling, analyzing, and reporting data under the bill. 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 of these forfeitures. (MSP's use of forfeiture funds are already subject to audit by the Office of Auditor General.)

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.²

Again, HB 5250 provides that a reporting agency could use forfeiture proceeds to pay for any reasonable costs associated with compiling, analyzing and reporting data under the bill. 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, prevention services and other expenditures that further law enforcement efforts or crime victim support.³

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

² Section 4708 of the Revised Judicature Act (MCL 600.4708) already requires that agencies receiving forfeiture funds to provide an annual report on the use of those funds to the Department of Technology, Management, and Budget. Although the bills do not delete this reporting requirement, it doesn't appear that that provision is enforced or complied with.

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 enhanced 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."

MSP's 2013 controlled substance 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.⁴

POSITIONS:

The American Civil Liberties Association supports the bills. (5-7-14)

The Michigan State Police oppose the bills in their current form. (6-3-14)

The Michigan Sheriffs' Association opposes the bills. (6-3-14)

The Michigan Chiefs of Police/Southeast Michigan Chiefs Association opposes the bills. (5-7-14)

The West Michigan Enforcement Team Policy Board and the Ottawa County Board of Commissioners opposes the bills. (6-3-14)

Legislative Analyst: J. Hunault
Fiscal Analysts: Mark Wolf

■ 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.

⁴ http://www.michigan.gov/documents/msp/2013_Asset_Forfeiture_Final_427690_7.pdf.