



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 750 (Substitute S-1 as reported)  
Sponsor: Senator John Pappageorge  
Committee: Judiciary

*(as passed by the Senate)*

Date Completed: 12-10-09

### **RATIONALE**

Under the Public Health Code, the State and local units of government may seize and dispose of property that is used to commit or facilitate criminal offenses involving controlled substances. The process, known as forfeiture, applies to both personal and real property, including residential property. The Code outlines a procedure that a seizing agency may use to forfeit property under certain circumstances; otherwise, a forfeiture action must be filed in court. When property is forfeited, the local unit or the State may retain it for official use, sell it and use the proceeds for drug-related law enforcement activities, or transfer it to the Michigan Board of Pharmacy or the U.S. Drug Enforcement Administration. When the forfeited property is a drug house, however, or other real property, it has been suggested that the best course of action might be demolition or, if the property is habitable or salvageable, conveyance to a nonprofit agency—methods of disposal that the Code does not authorize. It also has been suggested that a seizing agency should be able to request expedited proceedings when it seizes unsafe buildings that it would demolish upon forfeiture.

### **CONTENT**

**The bill would amend Article 7 (Controlled Substances) of the Public Health Code to do the following in regard to the forfeiture of real property for controlled substance violations:**

- Allow a seizing agency to request expedited proceedings on the ground that a building or structure constituted a health or safety hazard and the agency intended to demolish it.**

- Allow a local unit of government to demolish forfeited real property, preserve it for historic purposes, convert it to a park, or convey it to the State, a local unit, or a nonprofit entity for specific purposes.**
- Require a local unit's annual report of forfeiture activities to include information about real property disposed of by those methods.**

#### Expedited Proceedings

The bill would allow a seizing agency to request expedited proceedings on the ground that a building or structure subject to forfeiture constituted a health or safety hazard and the agency intended to demolish it upon forfeiture. A request for expedited proceedings could be filed at any time during the forfeiture proceedings but only with the approval of the Attorney General or the county prosecuting attorney. If a request were filed, the court would have to conduct and conclude the forfeiture proceedings before all other cases not having priority by statute. Each party with an ownership, possessory, or secured interest in the building or structure would have to be notified of the expedited proceedings and given an opportunity to be heard regarding forfeiture.

If the court ordered property to be forfeited, the order could 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, the court also could, with the approval of the Attorney General or

the county prosecuting attorney, execute the necessary documents at the time of forfeiture to complete that sale or transfer.

#### Disposal Options

Under Article 7, when property is forfeited, the local unit of government that seized it or the State, as applicable, may retain it for official use, sell property that is not required by law to be destroyed and is not harmful to the public, require the Michigan Board of Pharmacy to take custody of the property and remove it for disposition, or forward it to the U.S. Department of Justice's Drug Enforcement Administration for disposition.

Under the bill, if real property were forfeited, the local unit of government that seized the property also could dispose of it by doing any of the following with the consent of the Attorney General or the county prosecutor:

- Demolish the property.
- Preserve the property for historic purposes.
- Convert the property to a park or natural area.
- Convey the property to the State, a local unit of government, or a nonprofit entity for any of the purposes listed below.

Forfeited real property could be conveyed for use as a facility in which to do any of the following:

- Provide substance abuse treatment and rehabilitation services.
- Provide drug resistance education or crime prevention education.
- Provide job training skills to members of the community.
- Provide housing to individuals within the community who were displaced due to drug crime.

These provisions would not prohibit the local unit of government that seized the property from disposing of it in any other manner authorized under Article 7.

#### Annual Forfeiture Report

Under Article 7, before February 1 each year, every local unit of government that had forfeiture proceedings pending in the circuit court, forfeited property without a forfeiture proceeding, or received anything of value from the disposition of forfeited

property during the local unit's preceding fiscal year, 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 report must summarize the local unit's activities regarding the forfeiture of property for the fiscal year, and must contain specified information. Under the bill, the report also would have to contain a statement of all real property disposed of under the provision described above (allowing demolition, preservation, conversion, or conveyance), the means of disposal, the total value of the property, and, if the property were being used for an authorized purpose, the nature of that use.

MCL 333.7523-333.7524a

#### **BACKGROUND**

Part 75 (Administration and Enforcement) of the Public Health Code, in Article 7, describes property that is subject to forfeiture for controlled substance violations, and provides for forfeiture proceedings. Property that is subject to forfeiture includes a controlled substance; a raw material, product, or equipment that is used in manufacturing a controlled substance; property that is used as a container for either of those types of property; other drug paraphernalia; a conveyance used to transport that property for sale or receipt; books, records, and research products and material; any thing of value that is furnished in exchange for a controlled substance; and any thing of value that is used to facilitate any violation of Article 7. According to the Michigan Supreme Court, the last category is intended to permit the forfeiture of real property (*In re Forfeiture of \$5,264*, 432 Mich 242).

Property that is subject to forfeiture under Article 7 may be seized upon process issued by the circuit court. Part 75 also allows property to be seized without process under the following circumstances:

- The seizure is incident to a lawful arrest, pursuant to a search warrant, or pursuant to an administrative inspection warrant.

- The property is the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding.
- There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- There is probable cause to believe that the property was used or is intended to be used in violation of Article 7.

Part 75 prescribes a procedure for the forfeiture of property that is subject to seizure without process if its value does not exceed \$50,000. The seizing agency must give notice to the property owner and, unless all criminal proceedings related to the property have been completed, to the prosecuting attorney or the Attorney General. If a person claiming an interest in the property files a claim with the local unit or the State, and gives a bond, the prosecuting attorney, Attorney General, or city or township attorney must institute forfeiture proceedings. If no claim is filed, the local unit or the State must declare the property forfeited and dispose of it as provided in the statute.

If this procedure does not apply, a forfeiture action must be brought in court promptly after property is seized. A forfeiture action is an "*in rem*" proceeding; that is, an action against the property itself. Forfeiture actions are considered quasi-civil because of the relationship to criminal activity. The U.S. Supreme Court has held, however, that *in rem* civil forfeitures under the Federal forfeiture law are neither punishment nor criminal for purposes of the Double Jeopardy Clause of the U.S. Constitution (*United States v Ursery*, 518 U.S. 267).

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The forfeiture of drug houses and other buildings substantially connected with drug offenses does not alleviate all of the problems involved with the property, and may lead to additional problems. If the buildings cannot be sold, torn down, or put to a good use, they remain a venue for criminal activity and a blight on the neighborhood. At the same time, the seizing agency becomes liable for taxes,

insurance, and personal injury. The bill would address these issues in two ways: by providing for expedited forfeiture proceedings, and expanding the options for disposing of forfeited property.

The provisions for expedited proceedings would apply when a building presented a threat to health or safety and the seizing agency intended to demolish it upon forfeiture. A request for expedited proceedings would have to be approved by the Attorney General or county prosecutor, and the court could order immediate demolition of the building if the property were forfeited. The court also could execute documents for the sale or transfer of the property by the seizing agency. These provisions would help prevent situations in which seized property sits vacant and continues to deteriorate. An expedited forfeiture action would take precedence over other cases that did not have priority by law, and would accelerate the demolition of hazardous structures.

In addition to allowing buildings to be torn down, the bill would allow real property to be disposed of in beneficial ways. These would include conveyance to a nonprofit entity that could use the property for housing, job training, substance abuse treatment and rehabilitation, or drug resistance or crime prevention education. If a drug house were habitable or salvageable, it could be conveyed to Habitat for Humanity, for example, and refurbished as housing for individuals displaced by drug crime.

### **Opposing Argument**

Drug houses are commonly rental property owned by people who might not be in the community or even in the State. The condition of a house that would be torn down might be the result of neglect. The bill might go too far by allowing an expedited proceeding that could result in demolition, especially since the standard of proof in forfeiture actions is probable cause and the burden is on the property owner to demonstrate that the property is not forfeitable.

**Response:** A property owner would be afforded due process as owners are under current law. Notice would have to be given and the owner would have an opportunity to make a case in court that the property was not subject to forfeiture. As always, the

court would make the decision whether to order forfeiture. Since the action would not languish in court, expedited proceedings actually could benefit property owners.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would exhibit a negligible effect on State and local revenue and expenditures. For property affected by the changes creating an expedited process for demolishing structures, the bill would accelerate the timing of any demolition costs as well as any future revenue from disposal of the property. The new provisions regarding the treatment of seized property would potentially allow property to be put to new uses, which could increase either costs or revenue or both, depending on the nature of the property and how it was disposed of under the bill's provisions.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.