



**House
Legislative
Analysis
Section**

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**TERRORISM: ALLOW SEIZURE AND
FORFEITURE OF PROPERTY**

**House Bill 5513 as introduced
First Analysis (1-24-02)**

**Sponsor: Rep. Charles LaSata
Committee: Insurance and Financial
Services**

THE APPARENT PROBLEM:

Public Act 104 of 1988 created a general forfeiture law that provides for the forfeiture to the government of property used for or obtained through the commission of any of some 60 crimes, including arson, bribery, burglary, embezzlement, securities fraud, larceny, robbery, Medicaid fraud, and distribution of obscene material to a minor. In light of the recent terrorist attack of September 11, 2001, some feel that the state should be allowed to seize property and financial assets of people involved in the planning and execution of terrorist actions in the state.

THE CONTENT OF THE BILL:

The bill is part of a multi-bill package addressing the issue of terrorism and would amend the Revised Judicature Act (RJA) to add a violation of Chapter LXXXIII-A of the Michigan Penal Code, regarding acts of terrorism, to the definition of a "crime" for which property could be forfeited. (Chapter LXXXIII-A would be added to the penal code by House Bill 5495 or Senate Bill 930. An "act of terrorism" is defined in those bills as "an act that would be a violent felony under the laws of this state, whether or not committed in this state, that is dangerous to human life and intended to intimidate or coerce a civilian population or influence or affect the conduct of a government or a unit of government through intimidation or coercion.")

The RJA allows certain personal and real property to be subject to seizure by, and forfeiture to, a local unit of government or the state. In addition to what is currently allowed, if the crime was an act of terrorism in violation of Chapter LXXXIII-A of the penal code, real or personal property meeting any of the following conditions would also be subject to seizure and forfeiture:

- The property was used or was intended to be used in the commission of the crime;

- The property provided, or was intended to provide, material support or resources for the commission of the crime;
- The property was used in the preparation of the crime;
- The property was used to conceal the crime;
- The property was used to escape from the scene of the crime; or,
- The property was used to conceal the identity of one or more of the individuals who committed the crime.

MCL 600.4700 and 600.4702

BACKGROUND INFORMATION:

Following the events of September 11, 2001, the leadership of both caucuses of the state House of Representatives and the Senate, the governor, the attorney general, the Emergency Management Division of the Department of State Police, and various other state departments began meeting to address the issue of terrorism, evaluate the state's disaster preparedness policies, and identify areas that needed reform. In addition, the attorney general began a review of the state's criminal statutes and their ability to deal with the threat of terrorist activities within the state. The multi-bill package on terrorism is a bi-partisan, bi-cameral initiative to address the concerns identified in those meetings.

FISCAL IMPLICATIONS:

Typically, state-owned property from forfeitures is kept until after any court action has been finalized, and then the property is sold or auctioned with the proceeds of the sale credited to the state. The House Fiscal Agency reports that the bill would have an

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indeterminate fiscal impact on revenues at this time.
(1-22-02)

ARGUMENTS:

For:

Perhaps one of the more powerful disincentives to the war on drugs and other crimes has been the authority of the government to seize property (which includes cash, houses, and cars) that has been used in the commission of certain crimes. The bill would allow state or local governments to also seize property used to support the commission of terrorist activities. Like the drug trade, significant amounts of money are needed to fund terrorist activities. Allowing the seizure of vehicles, land, houses, other buildings, and cash could put a serious crimp in the ability of terrorist organizations to bring their destructive plans to fruition.

Response:

This sounds like a good policy for assets located in the state, but terrorists generally operate across state lines. Further, it isn't clear who would benefit from the seized assets.

Rebuttal:

Under various state and federal laws, mechanisms do exist for the seizure and forfeiture of property located in other states that is owned or utilized by criminals operating in this state. Further, the general forfeiture laws specify the distribution of forfeiture proceeds in a descending order of priority. After satisfying outstanding security interests of a party with no prior knowledge of the crime, any court-ordered restitution, claims by victims not covered by restitution orders, and payment of expenses of the proceedings for the forfeiture and sale of the property, the remaining balance goes to the local government that was substantially involved in the forfeiture. Three-quarters of this money is required to go for law enforcement and one-quarter for implementation of the Crime Victim's Rights Act.

Against:

The newly enacted federal USA Patriot Act establishes the right of property owners to contest confiscation of property under a law relating to confiscation of assets of suspected terrorists. However, the bill doesn't seem to address the unlawful seizure of property in connection to a terrorist act. Couldn't this result in the unfair confiscation of property belonging to people who had no knowledge that their property was being utilized to further terrorist activities?

Response:

Under other provisions of the Revised Judicature Act, a mechanism does exist for a person who neither had prior knowledge of nor consented to the commission of a crime to ask the court to return the seized property. Currently, the prosecution has the burden of proof to show probable cause that the property was subject to forfeiture. These existing provisions would also apply to seizures and forfeitures of property related to terrorist activities. Further, the main bill in the anti-terrorism package contains detailed definitions of what types of activities would constitute helping or assisting in terrorist acts. To trigger penalties under this bill, a person would have to either commit a terrorist act or knowingly render support or resources to another with the intention that the support or resources would be used to plan or carry out an act of terrorism. Therefore, sufficient protections should exist in current laws and the proposed anti-terrorism bills to capture only those who are actively engaging in or supporting terrorist activities.

POSITIONS:

The office of the governor supports the bill. (1-22-02)

The office of the attorney general indicated support for the bill. (1-23-02)

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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.