

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 529 w/CS Disposition of Proceeds
SPONSOR(S): Sorensen
TIED BILLS: None **IDEN./SIM. BILLS:** SB 62

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	18 Y, 0 N w/CS	Jaroslav	Havlicak
2) Public Safety & Crime Prevention			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Current law specifies a number of uses on which local governments may expend proceeds from the sale of forfeited property. This bill clarifies that counties and municipalities may also fund drug court programs with such funds.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sections 932.701 through 932.707, F.S., constitute the Florida Contraband Forfeiture Act (“Act”). The Act is designed to impose severe penalties on criminals and their organizations. Law enforcement agencies are empowered to seize anything that was used in, or acquired with proceeds of, felonious criminal actions. The seizure is accomplished through an *in rem* civil proceeding against the property itself, as opposed to the underlying criminal prosecution against the offenders. The Act prescribes procedures for law enforcement to implement when seizing, forfeiting, and disposing of property. The constitutionality of the Act has been upheld by the Florida Supreme Court.¹

Section 932.7055, F.S., provides for the disposition of liens and forfeited property. When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may retain the property for the agency's use; sell the property; or salvage, trade, or transfer the property to any public or nonprofit organization.² The proceeds from the sale of forfeited property must be disbursed in the following priority:³

1. payment of the balance due on any lien preserved by the court in the forfeiture proceedings;
2. payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and
3. payment of court costs incurred in the forfeiture proceeding.

If the seizing agency is a county or municipal agency, any remaining proceeds must be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality.⁴ Such proceeds and the interest earned on it must be used for school resource officers; crime prevention; safe neighborhood; drug abuse education and prevention programs; or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

¹ See *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

² See s. 932.7055(1), F.S.

³ See s. 932.7055(3), F.S.

⁴ See s. 932.7055(4)(a), F.S.

Local law enforcement agencies that acquire at least \$15,000 in forfeiture proceeds within a fiscal year must expend or donate “no less than 15 percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program(s).”⁵ The local law enforcement agency has the discretion to determine which program(s) will receive the designated proceeds. In addition, the proceeds may be expended or donated over a period of years if the expenditure or donation of such minimum amount in any given fiscal year exceeds the needs of the county or municipality for such program(s).

The Florida Department of Law Enforcement (“FDLE”) reports that for local fiscal year 2000/01, \$42.2 million was collected on behalf of local law enforcement agencies from contraband forfeiture proceeds statewide. After deducting lien satisfactions, storage and maintenance costs, agency costs, and court costs, \$30.6 million was disbursed to local law enforcement agencies.

For Local Fiscal Year 2000-2001, local law enforcement agencies reported spending contraband forfeiture proceeds for the following:⁶

Local Agency Contraband Forfeiture Expenditures, FY 2000-2001

Complex/Protracted Investigations	\$3,160,414
Technical Equipment	\$8,529,637
Technical Expertise	\$1,487,317
Match Funds for Federal Grants	\$5,722,520
Other	\$7,317,972
School Resource Officer Programs	\$1,640,979
Safe Neighborhood Programs	\$1,153,163
Crime Prevention Programs	\$9,977,258
Drug Abuse Education Programs	\$1,141,813
Drug Prevention Programs	\$992,691
Drug Treatment Programs	\$49,214
Total	\$38,012,564

Proposed Changes

This bill amends s. 932.7055(4)(a), F.S., to specifically authorize counties and municipalities to fund drug court programs with proceeds from the sale of forfeited property. While such expenditures may be authorized under current law as “other law enforcement purposes” deemed appropriate by the county commission or governing board of the municipality, this bill explicitly makes clear that this a valid use of such funds.

⁵ Section 932.7055(4)(c)3, F.S. In FY 2000-2001, 130 of 763 local law enforcement agencies acquired at least \$15,000 in forfeiture proceeds.

⁶ Expenditures exceed disbursements because law enforcement agencies used previously disbursed moneys to fund programs.

C. SECTION DIRECTORY:

Section 1. Amends s. 932.7055(4)(a), F.S., to provide that local governments may fund drug court programs with proceeds from the sale of forfeited property.

Section 2. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 26, 2003, the House Committee on Judiciary adopted one amendment to this bill. The amendment eliminates an increase in percentage (from 15% to 25%) that a local law enforcement agency with more than \$15,000 in annual forfeited assets must spend on specified uses, leaving it at the current 15%. The Committee then reported this bill favorably with a committee substitute, the substance of which is reflected in this analysis.