

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 1534 (333636)

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1534 amends the Florida Contraband Forfeiture Act (sections 932.701 through 932.706, Florida Statutes) (act) by adding a number of new requirements for law enforcement agencies that seize property, including:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.
- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property;
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act; and
- Completion of a detailed annual report indicating whether the agency has received or forfeited property, to be kept on file and accessible to the public.

The bill revises requirements for the seizure and forfeiture process, the authorized use of forfeited property, and distribution of contraband forfeiture funds. These revisions include:

- Prohibiting the seizing agency from retaining forfeited property for the agency's use.
- Requiring that any revenues received from federal sources that are derived from forfeitures must be deposited in the same manner as forfeiture proceeds received pursuant to the act;
- Requiring a state agency to deposit any forfeiture proceeds remaining after all liens and debts have been paid into the Department of Legal Affairs' Crimes Compensation Trust Fund (rather than into the General Revenue Fund)
- Restricting use of any forfeiture proceeds retained by a local law enforcement agency to providing for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators.
- Requiring any forfeiture proceeds that are not retained by a local law enforcement agency to be deposited in the Crimes Compensation Trust Fund. Requiring any local law enforcement agency that acquires any forfeiture proceeds under the act within a fiscal year to expend or donate 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Providing procedures for other agencies or organizations to request appropriations of forfeiture proceeds from the seizing agency.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting a provision relating to repayment of funds that were advanced from a municipality's general fund prior to October 1, 2001.

The bill's limitations on the use of forfeiture proceeds will eliminate a source of funds for the activities that are no longer authorized. This may have a significant fiscal impact on local law enforcement agencies to the extent that an agency continues activities currently funded with forfeiture proceeds. Forfeiture proceeds that are currently deposited into agency trust funds by designated state agencies with major law enforcement functions will be redirected into the Crimes Compensation Trust Fund. This will have a fiscal impact on the state to the extent that these state agencies seek appropriations to continue activities currently funded by forfeiture proceeds.

This bill provides an effective date of July 1, 2015.

II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701 through 932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.¹

¹ Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

Section 932.704, F.S., requires the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.²

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.³

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.⁴

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.⁵

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.⁶

An agency or organization, other than the seizing agency, that wishes to receive such funds must apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.⁷

² Section 932.704(11), F.S.

³ Section 932.7055(1), F.S.

⁴ Sections 932.7055(3) and (4), F.S.

⁵ Section 932.7055(5), F.S.

⁶ Section 932.7055(5)(c)3., F.S.

⁷ Section 932.7055(5)(c), F.S.

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.⁸

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:

- FDLE;
- Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.⁹

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

III. Effect of Proposed Changes:

The bill amends the Florida Contraband Forfeiture Act (ss. 932.701 through 932.706, F.S.) in a number of ways relating to the process of seizing property, forfeiting property, and disposing of the proceeds obtained from forfeiture actions.

Section 932.704, F.S., is amended to add the following requirements for law enforcement agencies that seize and forfeit contraband property:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.

⁸ Section 932.7055(5), F.S.

⁹ Section 932.7055(6), F.S.

- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property; and
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act.

Section 932.7055, F.S., is amended to revise the authorized distribution and use of forfeited property and contraband forfeiture funds under the act. This includes:

- Prohibiting the seizing agency from retaining the forfeited property for the agency's use.
- For state agencies, requiring any forfeiture proceeds remaining after all liens and debts are paid to be deposited into the Department of Legal Affairs' Crimes Compensation Trust Fund. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. Other agencies must deposit the funds in the General Revenue Fund.
- For local law enforcement agencies, permitting the agency to deposit all remaining proceeds into a local special law enforcement trust fund to be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators. Current law provides for all remaining funds to be deposited into the local special law enforcement trust fund, and permits additional uses for other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, or providing matching funds for federal grants.
- Requiring any local law enforcement agency that acquires any property or assets under the act within the fiscal year to expend or donate at least 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Requiring any agency or organization other than the seizing agency that requests to receive such funds to provide a detailed accounting, indicating that the funds will only be used for the above stated purposes. The bill states that these requests are public records as defined in ch. 119, F.S.
- Deleting current provisions establishing forfeiture trust funds for numerous specified state agencies.
- Providing that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting s. 932.7055(4)(d), F.S., which permits expenditure of funds in a municipality's special law enforcement trust fund to be expended to reimburse the municipality's general fund for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. The paragraph is applicable only for Fiscal Year 2014-2015 and expires July 1, 2015. It was originally enacted as part of the implementing bill for the 2002-2003 General Appropriations Act and was applicable to Fiscal Year 2002-2003, but has been updated in the General Appropriations Act implementing bill each year since that time.

The bill also makes conforming changes and reenacts a statute to incorporate changes made by the bill.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of PCS/SB 1534, persons who receive funding from the Crimes Compensation Trust Fund may be positively impacted as a result of the bill's mandate that seizing local law enforcement agencies deposit half of the forfeiture funds into that trust fund. Conversely, the reduction of funds kept by local law enforcement agencies could have a negative impact on organizations that receive grants from local law enforcement agencies.

C. Government Sector Impact:

The bill removes authorization for local law enforcement agencies to use forfeiture proceeds to pay for certain law enforcement equipment and activities. If the local law enforcement agency desires to continue these activities, these funds may need to be replaced from other sources.

The bill prohibits state agencies from retaining any funds from forfeitures. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. The bill directs that these funds be deposited in the Crimes Compensation Trust Fund. Any forfeiture funds acquired by other state agencies are currently deposited into the General Revenue Fund, but the bill also directs that these funds be deposited in the Crimes Compensation Trust Fund.

The FDLE indicates that it deposits approximately \$2 million of forfeiture funds into its Forfeiture and Investigative Support Trust Fund (FIST) each year. FIST funds are appropriated to the FDLE by the Legislature. Redirection of the funds would require appropriation from another source in order to continue current practices. The FDLE is also concerned that the bill will disqualify state agencies from receiving any federal shared forfeitures because deposit of funds into the Crimes Compensation Trust Fund does not meet federal forfeiture sharing guidelines. FDLE receives approximately \$1.2 million annually from federal shared forfeitures.¹⁰

The Department of Financial Services reports that its Division of Insurance Fraud has deposited approximately \$1.6 million in forfeiture proceeds into agency trust funds from Fiscal Year 2008-2009 to the present. These proceeds were derived from either direct seizures by the agency or joint seizures with federal, state, or local law enforcement agencies. These proceeds have been used to purchase such items as software, new technologies, specialized equipment, and training. The department has a legislative budget request submitted for Fiscal Year 2015-2016 to use more than \$500,000 of these proceeds for purchases including investigative software, maintenance and upgrade or replacement of law enforcement equipment, and training.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 932.704 and 932.7055.

This bill creates section 32.7061 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 27.3451, 381.0081, 874.08, 895.09, and 932.703.

This bill makes conforming amendments to cross references in the following sections of the Florida Statutes: 322.34, 323.001328.07, and 817.625.

¹⁰ 2015 FDLE Legislative Bill Analysis, SB 1534, March 3, 2015.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Incorporates the contents of CS/SB 440 (2015), which adds a number of new requirements to the Florida Contraband Forfeiture Act (the act) relating to the seizure and forfeiture process, training of officers, reporting, and documentation. These changes are detailed in the description of amendments to s. 932.704, F.S., in the “Effects of Proposed Changes” section of this analysis.
- Permits a local law enforcement agency to retain all forfeiture proceeds for designated uses, and requires any non-retained proceeds to be deposited into the Crimes Compensation Trust Fund. The bill required 50 percent of forfeiture proceed to be retained by the agency and 50 percent to be deposited into the Crimes Compensation Trust Fund.
- Requires any local law enforcement agency that acquires property or assets pursuant to the act to expend or donate at least 50 percent of proceeds for designated purposes. The bill limits expenses or donations to 50 percent of proceeds and applies this requirement only to agencies that acquire at least \$15,000 pursuant to the act.
- Restores authorization for local law enforcement agencies to purchase portable defibrillators with forfeiture proceeds.
- Provides that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring a seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.

- B. **Amendments:**

None.