

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 Criminal Justice

BILL: CS/SB 440

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Contraband Forfeiture

DATE: March 31, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 440 amends the Contraband Forfeiture Act by adding the following requirements:

- The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
- The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations;
- The seizing agency must complete a detailed annual report indicating whether it has received or forfeited property, to be kept on file and accessible to the public;
- Any forfeiture action settlement must be consistent with the mandates of the act and in compliance with agency policy or directives; and
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701-932.706, 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

Section 932.704, F.S., provides that the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall 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

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).

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.

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 shall 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

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;
- 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 s. 932.703, F.S., by adding the following requirements:

⁶ Section 932.7055(5)(c)3., F.S.

⁷ Section 932.7055(5)(c), F.S.

⁸ Section 932.7055(5), F.S.

⁹ Section 932.7055(6), F.S.

- The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
- The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations;
- Any forfeiture action settlement must be consistent with the mandates of the act and in compliance with agency policy or directives; and
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

The bill also creates s. 932.7061, F.S., requiring every seizing agency to complete an annual report indicating whether it has received or forfeited property. The report must be kept on file with the seizing agency for public access. The report must specify the following:

- The type of property;
- The property's approximate value;
- The court case number;
- The type of offense for which the property was seized;
- The disposition of the property, and
- The dollar amount of the proceeds received or expended.

The effective date of the bill is 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:

None.

C. Government Sector Impact:

Any fiscal impact upon a seizing agency because of the bill's new requirements is unknown but likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 932.704 of the Florida Statutes.

This bill creates section 932.7061 of the Florida Statutes.

This bill makes technical and conforming changes to the following sections of the Florida Statutes: 932.701, 322.34, 323.001, 328.07, 817.625, 27.3451, and 874.08.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 30, 2015:**

- Deletes the requirement that the seizure or forfeiture of property is incidental to an arrest of the person involved in the criminal activity in violation of the act.
- Adds the following requirements:
 - The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
 - The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
 - The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;

- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
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- The seizing agency must complete a detailed annual report indicating whether it has received or forfeited property, to be kept on file and accessible to the public;
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- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

B. Amendments:

None.