

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 7, 1998 Revised: \_\_\_\_\_

Subject: Federal Proceeds Trust Fund for the Department of Law Enforcement

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Currently, state and federal revenues which the Florida Department of Law Enforcement (FDLE) derives from forfeiture proceedings are deposited into *one* trust fund. This bill separates the state and federal proceeds into *two* trust funds. Under the bill, the FDLE revenues derived from state forfeiture proceedings remain in the Forfeiture and Investigative Support Trust Fund while the forfeiture revenues shared with the federal government are deposited into the newly created Federal Proceeds Trust Fund.

This bill requires a 3/5 vote of the membership of each house and it takes effect upon becoming law.

This bill substantially amends section 943.362 of the Florida Statutes.

**II. Present Situation:**

**A. Forfeiture Provisions**

The Comprehensive Crime Control Act of 1984 provides a national asset forfeiture program administered by federal investigators and prosecutors. Guidebook: *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, Department of Justice, March 1994. The United States Attorney General has authority to share federally forfeited property with state and local law enforcement agencies. 21 U.S.C. s. 881, 981 & 1161a. The congressional intent is for the Attorney General to share forfeited property "that bears a reasonable relationship to the degree of participation of the State or local agency in the law enforcement effort resulting in the forfeiture...." 21 U.S.C. s. 881

Any state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture. There are two ways for an agency to participate in the equitable sharing program. Guidebook: *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, Department of Justice, March 1994, p.3. The most common way is through a *joint investigation* in which federal agencies work with state or local law enforcement agencies to enforce federal criminal laws. *Id.* Alternatively, a state or local law enforcement agency may request that certain federal agencies *adopt* seized property and initiate a federal forfeiture proceeding. Federal agencies may adopt seized property for federal forfeiture where the conduct giving rise to the seizure is in violation of federal law. *Id.*

Sections 932.701 - 932.707, F.S., are known as the Florida Contraband Forfeiture Act. The Act provides the policy and procedures for forfeiture of contraband articles used for criminal purposes in violation of Florida law. The Act requires that before a forfeiture takes place, the seizing agency must establish by a preponderance of the evidence that the property owner knew or should have known after reasonable inquiry that the property was used or likely to be used in criminal activity. s. 932.703(6)(a), F.S.

The Florida Department of Law Enforcement (FDLE) deposits proceeds derived from the forfeiture of contraband under the Florida Contraband Forfeiture Act in the Forfeiture and Investigative Support Trust Fund. s. 943.362, F.S. FDLE also deposits forfeiture revenues shared with the federal government into this trust fund. However, according to FDLE's General Counsel, the federal and state money inflow and outflow are separately tracked. As of March 31, 1998, the trust fund contained approximately \$1.4 million. Of that amount, approximately \$544,000 was derived from equitable sharing of federally forfeited property.

The Department of Justice's guidelines require each local law enforcement agency which receives federally shared funds to "implement standard accounting procedures and internal controls," including "depositing shares into a separate revenue account or accounting code." Guidebook: *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, Department of Justice, March 1994, p.18. Further, although the Department of Justice's guidelines only require separate accounting, the Florida Comptroller has recommended that the Department of Highway Safety and Motor Vehicles establish a separate trust fund for deposit of federal equitable sharing monies. *Investigative Findings*, Office of the Comptroller, Department of Banking & Finance, Division of Financial Investigations (on file with comm.).

## **B. Trust Funds**

A state constitutional provision passed in 1992 provides that all trust funds in existence on November 4, 1992, expired four years after that date. Art. III, s. 19(f)(2), Fla. Const. No trust fund may be created by general law except by a 3/5 vote of the membership of each house of the legislature in a separate bill for that purpose only. Art. III, s. 19(f)(1), Fla. Const. Further, all trust funds expire no later than four years after the date they are created. Art. III, s. 19(f)(2), Fla.

Const. Section 215.3206, F.S., provides for “sunset” review of trust funds in the regular session preceding the trust fund’s date of expiration. The agency responsible for the administration of the trust fund and the Governor for executive branch trust funds, or the Chief Justice for judicial branch trust funds, shall recommend to the House Speaker and Senate President whether the trust fund should be allowed to terminate or should be re-created.

Section 215.20 (1), F.S., provides that a 7 percent service charge shall be taken from revenue deposited in all trust funds for the General Revenue Fund. Section 215.20 (4), F.S., contains a list of trust funds that pay a 0.3 percent service charge and s. 215.22, F.S., contains a list of trust funds that are exempted. Sections 215.22 (3) and 215.24, F.S., authorize the Governor to exempt any trust fund when federal matching funds, contributions or private grants to any trust fund would be lost to the state because of the service charge payment.

The Department of Justice’s guidelines contain a list of the permissible and impermissible uses of the federally shared funds. *See* Guidebook, *supra*, p.10. The permissible uses relate to law enforcement expenses. *Id.* The guidelines specify that payment for non-law enforcement expenses constitute an impermissible use. *Id.* The FDLE’s General Counsel maintains that the federal guidelines require that these funds “not be subject to s. 215.20, 7 percent general revenue service fund.” According to the Department of Justice, the guidelines do not permit transfers to a state or general revenue fund. *Memorandum from Robert O. Sharp, Asset Forfeiture and Money Laundering Section*, April 6, 1998, (On file with comm.).

### **III. Effect of Proposed Changes:**

Currently, state and federal revenues which the Florida Department of Law Enforcement (FDLE) derives from forfeiture proceedings are deposited into *one* trust fund, the Forfeiture and Investigative Support Trust Fund. This bill separates the state and federal proceeds into *two* trust funds. Under the bill, the FDLE revenues derived from state forfeiture proceedings remain in the Forfeiture and Investigative Support Trust Fund while the forfeiture revenues shared with the federal government are deposited into the newly created Federal Proceeds Trust Fund.

The bill deletes the term “criminal” which currently modifies “proceedings” in the statute. The intent is to reflect the current practice of depositing funds derived from both civil and criminal forfeiture proceedings.

The bill exempts the trust fund from the 7 percent service charge imposed on trust funds under s. 215.20, F.S.

Pursuant to the state constitution, the trust fund will terminate no later than July 1, 2002. However, the bill provides that the trust fund will come under “sunset” review as provided by s. 215.3206(1) & (2), F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Trust funds may be created by general law only by a 3/5 vote of the membership of each house of the Legislature and only in a separate bill for that specific purpose. s. 19(f)(1), Art. III, Fla. Const. Further, all trust funds must expire no later than 4 years after the date they are created. s. 19(f)(2), Art. III, Fla. Const.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Senate Bill 2242 creates the Federal Law Enforcement Trust Fund for the Department of Highway Safety and Motor Vehicles. Senate Bill 2242 requires the department to deposit into the trust fund all revenues received by the department from all federal forfeiture proceedings and asset-sharing programs.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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