

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 427 Forfeiture

SPONSOR(S): Fetterman

TIED BILLS: IDEN./SIM. BILLS: SB 1178

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Padgett	Kramer
2)	Military & Local Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Criminal & Civil Justice Appropriations Committee			
5)				

SUMMARY ANALYSIS

Sections 932.701 – 932.706, F.S. are known as the Florida Contraband Forfeiture Act (FCFA). FCFA provides law enforcement agencies the authority to seize certain property that has been used, or is being used in the commission of a felony or in other enumerated crimes. If the seized property is required to be titled or registered, or if the owner of the property is known to the seizing agency, the seizing agency must publish notice of the forfeiture complaint once each week for two consecutive weeks in a newspaper of general circulation in the county where the seizure occurred.

The bill provides the seizing law enforcement agency the option to post the notice of the forfeiture complaint on an official government Internet site. The bill provides the forfeiture notice must be posted on the Internet for at least 30 consecutive days and the seizing agency must file an affidavit indicating that publication was made by Internet posting.

The bill expands the types of programs the proceeds of forfeited property may be used to fund to include gang crime, economic crime, or sex offender programs.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Forfeiture Proceedings

Present Situation

Sections 932.701 – 932.706, F.S. are known and cited as the “Florida Contraband Forfeiture Act” (FCFA). For purposes of FCFA, “contraband” is defined to mean items of property, including:

- any controlled substance defined in Chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange used in violation of any provision of Chapter 893
- any gambling paraphernalia used to violate the gambling laws;
- any equipment used to violate beverage or tobacco laws;
- any motor fuel for which the motor fuel tax has not been paid;
- any personal property used as an instrumentality in the commission of, or in aiding or abetting any felony;
- any real property used as an instrumentality in the commission of, or in aiding or abetting any felony;
- the vehicle of a person charged with driving under the influence.

If law enforcement seizes a person's property pursuant to the FCFA, a complaint is filed in the civil division of the circuit court.¹ The owner of the seized property may contest the forfeiture by requesting an adversarial preliminary hearing, or the owner may settle with the seizing law enforcement agency prior to a hearing.²

If the seized property is required to be titled or registered, or if the owner of the property is known to the seizing agency, the seizing agency must publish notice of the forfeiture complaint once each week for two consecutive weeks in a newspaper of general circulation³ in the county where the seizure occurred.

Proposed Changes

¹ Section 932.704(2), F.S.

² Id. at (5) and (7).

³ “Newspaper of general circulation” is defined to mean a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper the primary function of which is to carry legal notices, or a newspaper that is given away primarily to distribute advertising. Section 165.031(9), F.S.

The bill provides the seizing law enforcement agency the option to post the notice of the forfeiture complaint on an official government Internet site. The bill provides the forfeiture notice must be posted on the Internet for at least 30 consecutive days and the seizing agency must file an affidavit with the court indicating that publication was made by Internet posting.

Disposition of Forfeited Property

Currently, s. 932.7055(5), F.S. provides that if the seizing agency is a county or municipal agency, the remaining proceeds, after all liens, court costs, and other financial obligations have been satisfied, may be used to fund the following: school resource officers, crime prevention programs, safe neighborhood programs, drug abuse education and prevention programs, defraying the cost of complex investigations, additional law enforcement equipment or expertise, automated external defibrillators for use in law enforcement vehicles, and for use in obtaining federal matching funds. Section 932.7055(5)(c)3., F.S., provides that any local law enforcement agency that acquires at least \$15,000 pursuant to the FCFA must donate at least 15 percent of such proceeds to drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs. The local law enforcement agency has the discretion to determine which programs receive funding.⁴

The bill expands the types of programs the proceeds of forfeited property may be used to fund to include gang crime, economic crime, or sex offender programs. The bill makes the three programs eligible for funding under the FCFA, but does not mandate that any percentage of forfeiture proceeds be used to fund the new programs.

B. SECTION DIRECTORY:

Section 1: Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 2: Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Newspapers may see a decline in revenue due to publication of fewer government notices.

⁴ Section 932.7055(5)(c)3., F.S. The programs that request funding must submit an application to the law enforcement agency as provided in s. 932.7055(5)(c), F.S.

D. FISCAL COMMENTS:

Since the government must pay newspaper standard advertising rates to publish forfeiture notices, the government agency that seizes property in forfeiture proceedings may gain cost savings from the elimination of the newspaper publishing requirement.

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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES