HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Money Laundering
SPONSOR(S): Grady
TIED BILLS: **IDEN./SIM. BILLS:** SB 2318

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Billmeier	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 1289 defines “proceeds” in statutes relating to RICO, money services businesses, and money laundering. This bill defines “proceeds” to include gross receipts from a criminal enterprise. This definition mirrors the definition in federal law.

This bill amends statutes relating to RICO, money services businesses, and money laundering to remove the requirement that violations of those statutes occur over a 12 month period and allows prosecutors to make charging decisions based on a longer or shorter period of criminal conduct. It permits the values of separate transactions to be aggregated in determine the offense level if the transactions were committed pursuant to one scheme or course of conduct.

This bill amends 896.101(10), Florida Statutes, to allow financial institutions, licensed money services businesses, employees or officers of a financial institution or licensed money services business, or any other person to provide information about the existence and contents of the subpoena and the investigation to the attorney consulted by the person or entity whose testimony is sought. It provides for a $5,000 fine for each violation of the provision.

The bill creates a criminal forfeiture provision in the state RICO statute. Current law allows for a separate civil forfeiture proceeding but does not create a mechanism for the forfeiture proceeding to occur within the criminal case. Creating a criminal forfeiture procedure within the RICO statute will allow the forfeiture proceeding to be tried at the same time as the criminal case. This will help prevent issues involving discovery and self-incrimination that can arise if the forfeiture case is a separate proceeding. The language in the criminal forfeiture section of this bill substantially mirrors federal law.

The fiscal impact is not known. This bill might have a positive fiscal impact if it leads to more forfeitures in criminal RICO cases.

The bill provides an effective date of July 1, 2010.

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:

This bill makes changes to statutes related to money services and money laundering to enable law enforcement to more effectively prosecute money laundering and RICO offenses in response to a decision from the United States Supreme Court. The bill modifies the penalty provisions so that increased penalties can be imposed on persons that violate the statutes. The bill prohibits certain financial institutions from notifying customers when the customers' financial information has been requested by law enforcement subpoena. Finally, the bill creates mechanism for forfeiture of assets in criminal RICO cases that tracks a federal criminal forfeiture statute.

Defining the Term "Proceeds"

Currently, Florida's money laundering act, Florida's statute relating to money services, and Florida's money laundering statute relating to financial institutions[1] use the term "proceeds" but do not define the term. For example, section 560.123, Florida Statutes, requires money services businesses[2] to maintain certain records[3] to deter the use of a money service business to conceal the proceeds of criminal activity. Section 896.101, Florida Statutes, Florida's money laundering act, prohibits a person knowing that the proceeds represent some form of unlawful activity, from conducting a financial transaction with the intent of carrying on some unlawful activity. Although "proceeds" is used throughout statutes, it is not defined.

The failure by Congress to define "proceeds" in federal statutes led to litigation before the United States Supreme Court. At issue in that case was whether the term "proceeds" referred to the "gross receipts" from criminal activity or from the "profits" derived from criminal activity.

United States v. Santos

In United States v. Santos,[4] the court dealt with the definition of word "proceeds" in the federal money laundering statute in a case related to an illegal gambling operation. From the 1970's until 1994,

[1] See §§ 560.103, 560.125, and 896.101, Florida Statutes.
[2] See § 560.103(18), Florida Statutes (defining money services business as "any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter").
[3] Records that are required to be maintained include a record of each financial transaction which has a value of greater than $10,000.
[4] 553 U.S. 507, 128 S.Ct. 2020 (2008). This analysis contains extensive quotations from the Santos opinions. In all such quotations, footnotes and internal citations are omitted.

Santos operated an illegal lottery and employed a number of workers to run the lottery.[5] At bars and restaurants, Santos's runners gathered bets from gamblers, kept a portion of the bets as commissions, and delivered the rest to Santos's collectors.[6] Collectors delivered the money to Santos, who used some of it to pay the salaries of collectors and to pay the winners.[7] At trial, the government was required to prove that the "proceeds" of the illegal gambling operation were used to fund an illegal act and that Santos knew the "proceeds" used to fund an illegal act were obtained by some unlawful activity. Based on the payments to runners, collectors, and winners with "proceeds" of his gambling operation, Santos was prosecuted and ultimately found guilty of money laundering and other crimes.[8] His initial appeals were unsuccessful but his federal habeas claim was ultimately heard by the Supreme Court.[9]

"Proceeds" was not defined in federal statute. The government argued that "proceeds" must mean "gross receipts." Otherwise, Justice Scalia summarized, the court will "disserve the purpose of the federal money-laundering statute," which is, the Government says, to penalize criminals who conceal or promote their illegal activities. On the Government's view, '[t]he gross receipts of a crime accurately reflect the scale of the criminal activity, because the illegal activity generated all of the funds.'"[10]

Santos argued that accepting the government's position would cause a "merger" problem.[11] That is, if "proceeds" meant "receipts," most violations of the illegal gambling statute would also be a violation of the money laundering statute because paying a winning bettor is a transaction involving receipts that the defendant intends to promote the carrying on of the lottery.[12] Justice Scalia continued:

> Since few lotteries, if any, will not pay their winners, the statute criminalizing illegal lotteries would "merge" with the money-laundering statute. Congress evidently decided that lottery operators ordinarily deserve up to 5 years of imprisonment but as a result of merger they would face an additional 20 years.[13]

Justice Scalia, writing for the plurality[14], argued that there was nothing in the statute to indicate whether "proceeds" meant "profits" or "gross receipts" so the statute was ambiguous. Justice Scalia argued that the rule of lenity required ambiguous criminal laws to be interpreted in favor of the defendants subjected to them ("Under a long line of our decisions, the tie must go to the defendant."[15] so he argued that Congress must have intended "proceeds" to mean "profits" and not "gross receipts."

In dissent, Justice Alito argued that the Model Money Laundering Act and the fourteen states that defined "proceeds" did so as "gross receipts."[16] He said that no state defined "proceeds" to mean "profits:"

> The federal money laundering statute is not the only money laundering provision that uses the term "proceeds." On the contrary, the term is a staple of money laundering laws, and it is instructive that in every single one of these provisions in which the term "proceeds" is defined—and there are many—the law specifies that "proceeds" means "the total amount brought in."
> …

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[5] See 128 S.Ct. at 2022.
[6] See 128 S.Ct. at 2022.
[7] See 128 S.Ct. at 2022.
[8] See 128 S.Ct. at 2023.
[9] See 128 S.Ct. at 2023.
[10] 128 S.Ct. at 2026.
[11] 128 S.Ct. at 2026.
[12] 128 S.Ct. at 2026.
[13] See 128 S.Ct. at 2026.
[14] Justices Souter, Thomas, and Ginsburg joined the opinion. Justice Stevens concurred in the judgment but did not join the opinion so the Scalia opinion became the plurality opinion and the opinion by Justice Alito, joined by Chief Justice Roberts, Justice Kennedy, and Justice Breyer became the dissent.
[15] See 128 S.Ct. at 2025.
[16] 128 S.Ct. at 2037.

> Fourteen States have money laundering statutes that define the term "proceeds," and in every one of these laws the term is defined in a way that encompasses gross receipts. …
>
> This pattern of usage is revealing. It strongly suggests that when lawmakers, knowledgeable about the nature and problem of money laundering, use the term "proceeds "in a money laundering provision, they customarily mean for the term to reach all receipts and not just profits. There is a very good reason for this uniform pattern of usage. Money laundering provisions serve two chief ends. First, they provide deterrence by preventing drug traffickers and other criminals who amass large quantities of cash from using these funds "to support a luxurious lifestyle" or otherwise to enjoy the fruits of their crimes. Second, they inhibit the growth of criminal enterprises by preventing the use of dirty money to promote the enterprise's growth. Both of these objectives are frustrated if a money laundering statute is limited to profits.[17]

Justice Alito rejected Justice Scalia's "merger" problem by noting that it does not justify "hobbling a statute that applies to more than 250 predicate offenses"[18] in order to reach the result reached in a gambling case.

Justice Stevens concurred in the judgment of Justice Scalia so "proceeds" was defined as "profits" for the limited purpose of the Santos case. Perhaps in anticipation of further litigation on other applications of the word "proceeds," Congress enacted a statute to define "proceeds" as "gross receipts." See Fraud Enforcement and Recovery Act of 2009, Public Law 111-21 § 2 (amending 18 USC § 1956).

Effect of the Bill

This bill defines "proceeds" in Florida's money laundering act, Florida's statute relating to money services, and Florida's money laundering statute relating to financial institutions to mean "gross receipts" from the unlawful activity. Adopting a definition in statute could help Florida avoid the litigation on a state level that occurred in the Santos case. The definition proposed in this bill is the same definition recently codified in federal law. See Fraud Enforcement and Recovery Act of 2009, Public Law 111-21 § 2 (amending 18 USC § 1956).

Increased Penalties for Money Laundering and for Violations of the Money Services Statute

Chapter 560 of the Florida Statutes sets forth Florida's Money Transmitters' Code. A Florida court explained the purposes of chapter 560:

> One of the purposes of this code, among others, is "[t]he deterrence of the use of money transmitters as a vehicle for money laundering." § 560.102(2)(d), Fla. Stat. (1995). To further this goal, the code requires any money transmitter operating in the state to register with the Florida [Office of Financial Regulation]. See § 560.122, Fla. Stat. (1995). Operating as a money transmitter without registration is a [felony] and also exposes the offender to an administrative fine.[19]

Section 560.125, Florida Statutes, provides penalties for engaging in money services businesses without a license. The penalties are as follows:

> If the violation involves currency or payment instruments in amounts greater than $300 but less than $20,000 in any 12 month period, it is punished as a third degree felony.

[17] See 128 S.Ct. at 2036-2038.
[18] 128 S.Ct. at 2044.
[19] See In re Forfeiture of One Hundred Seventy-One Thousand Nine Hundred Dollars ($171,900) in United States Currency, 711 So.2d 1269, 1273 (Fla. 3rd DCA 1998).

If the violation involves currency or payment instruments in amounts greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves currency or payment instruments in amounts greater than $100,000 in any 12 month period, it is punished as a first degree felony.[20]

In addition, persons who violate section 560.125 face additional criminal fines and administrative penalties of up to five times the value of the currency.[21]

Similar penalties are imposed for violations of the Florida Control of Money Laundering and Financial Institutions Act, section 655.50, Florida Statutes (the "Act"). The Act requires reporting of certain financial transactions. The reports are required to "deter the use of financial institutions to conceal the proceeds of criminal activity."[22] The penalties are as follows:

If the violation involves financial transactions in amounts greater than $300 but less than $20,000 in any 12 month period, it is punished as a third degree felony.

If the violation involves financial transactions in amounts greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves financial transactions in amounts greater than $100,000 in any 12 month period, it is punished as a first degree felony.[23]

Section 896.101, Florida Statutes, the Florida Money Laundering Act, provides penalties for making certain financial transactions while knowing that the property involved in the transaction represented proceeds from felony criminal activity. The penalties are as follows:

If the violation involves financial transactions in amounts less than $20,000 in any 12 month period, it is punished as a third degree felony.

If the violation involves financial transactions greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves financial transactions greater than $100,000 in any 12 month period, it is punished as a first degree felony.[24]

Current law requires violations to be aggregated over a 12 month period. This has the effect of restricting charging decisions of prosecutors. Federal law does not contain such a restriction.

Effect of the Bill

This bill amends sections 560.125, 655.50, and 896.101, Florida Statutes, to remove the requirement that violations of those statutes occur over a 12 month period and allows prosecutors to make charging decisions based on a longer or shorter period of criminal conduct. It permits the values of separate transactions to be aggregated in determining the offense level if the transactions were committed pursuant to one scheme or course of conduct. The bill makes conforming changes to the offense severity ranking chart to reflect some renumbering.

[20] See § 560.125, Florida Statutes.
[21] See § 560.125(6) and (7), Florida Statutes.
[22] § 655.50(2), Florida Statutes.
[23] See § 560.125, Florida Statutes.
[24] See § 896.101(5), Florida Statutes.

Investigative Subpoenas

Section 16.56, Florida Statutes, gives the Statewide Prosecutor the power to issue subpoenas to aid in investigations. Section 27.04, Florida Statutes, gives the state attorney the power to subpoena witness appearances. Section 896.101(10), Florida Statutes, states, in relevant part:

> If any subpoena issued under s. 16.56 or s. 27.04 contains a nondisclosure provision, any financial institution, licensed money services business, employee or officer of a financial institution or licensed money services business, or any other person may not notify, directly or indirectly, any customer of that financial institution or money services business whose records are being sought by the subpoena, or any other person named in the subpoena, about the existence or the contents of that subpoena or about information that has been furnished to the state attorney or statewide prosecutor who issued the subpoena or other law enforcement officer named in the subpoena in response to the subpoena.

Effect of the Bill

This bill amends 896.101(10), Florida Statutes, to allow financial institutions, licensed money services businesses, employees or officers of a financial institution or licensed money services business, or any other person to provide information about the existence and contents of the subpoena and the investigation to the attorney consulted by the person or entity whose testimony is sought. It provides for a $5,000 fine for each violation of the provision.

Criminal Forfeiture in RICO Cases

The bill creates a criminal forfeiture provision in the state RICO statute. Current law allows for a separate civil forfeiture proceeding but does not create a mechanism for the forfeiture proceeding to occur within the criminal case. Creating a criminal forfeiture procedure within the RICO statute will allow the forfeiture proceeding to be tried at the same time as the criminal case. This will help prevent issues involving discovery and self-incrimination that can arise if the forfeiture case is a separate proceeding.[25]

The language in the criminal forfeiture section of this bill substantially mirrors 18 USC §1963.

The bill provides that chapter 895, Florida Statutes, should be construed liberally for the purpose of curtailing racketeering activity and controlled substance crimes and to lessen the economic power of criminal enterprises.

A discussion of the criminal forfeiture process created by this bill follows.

Notice to the Defendant

The bill amends section 923.03, Florida Statutes, to provide that a judgment of forfeiture cannot be entered in a criminal case unless the indictment or information provides notice that the defendant has an interest in the property that is subject to forfeiture. [26] The state must prove beyond a reasonable doubt that the property is subject to forfeiture.[27]

A Defendant's Property is Subject to Forfeiture Upon Conviction

The bill provides that when a defendant is convicted of a violation of the RICO statute, the defendant forfeits any interest the defendant has acquired or maintained in violation of the statute, any interest

[25] Telephone interviews with a representative of the Office of the Attorney General, March 11-12, 2010.
[26] In United States v. Musson, 802 F.2d 384 (10th Cir. 1986), the court held that notice by indictment satisfied due process.
[27] In United States v. Pellullo, 14 F.3d 881 (3rd Cir. 1994), the court held that the state's burden of proof in criminal RICO forfeiture statutes is beyond a reasonable doubt. The language of the statute at issue in Pellullo is identical to the bill's language.

providing a source of influence over any enterprise that the defendant has acquired in violation of the statute, or any property or proceeds derived from the unlawful activity. Any such interest or property is transferred to the state upon conviction. Property subject to forfeiture includes real and personal property.

The bill provides that all rights to the property subject to forfeiture vests with the state upon commission of the crime. If the defendant transfers the property to another person after commission of the crime but before conviction, the bill provides a procedure for that person to show that the property was purchased without knowledge that it was subject to forfeiture. Accordingly, the bill provides protection for an "innocent" purchaser while preventing a defendant from transferring property to a co-defendant to avoid forfeiture.

The bill gives the circuit courts the authority to enter orders related to forfeited property or property that is subject to forfeiture without regard to the location of the property.

Disposition of Forfeited Property

The bill defines "prosecuting authority" for purposes of chapter 895, Florida Statutes, as the Attorney General, any state attorney, or the statewide prosecutor. The bill authorizes the court to enter a judgment of forfeiture upon conviction of a defendant and authorize the prosecuting authority to seize the property. The court is authorized to enter appropriate orders to protect the state's interest. Once the property is seized, the bill authorizes the prosecuting authority to dispose of the property by sale or other means. The bill gives persons other than the defendant or persons acting in concert with the defendant the right to petition to stay the sale of property while any appeal is pending if the person can show that failure to enter a stay will result in irreparable harm.

The bill authorizes the prosecuting authority to grant petitions or remission of forfeiture, compromise claims that may arise regarding the property, award compensation to persons providing information resulting in forfeiture of property, and direct the disposition of property. This provision could allow the prosecuting authority to resolve third party claims without the necessity of the court hearing provided for by the bill.

The bill authorizes the Attorney General to adopt rules relating to notice, granting petitions for mitigation, sale of property, and the compromise of claims arising from forfeiture.

Procedure for Pretrial Seizure of Property

The bill provides a procedure for the state to petition the court to enter a restraining order[28] or injunction to preserve the availability of property subject to forfeiture. The state may move for an appropriate order either:

(1) upon the filing of an indictment or information charging a violation of section 895.03(3), Florida Statutes.[29] The state must allege that the property is subject to forfeiture upon conviction; or

(2) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture and the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the

[28] In United States v. Musson, 802 F.2d 284 (10th Cir. 1986), the court noted that the Supreme Court has approved physical seizure of property on the basis of probable cause without a hearing. Accordingly, the court held, the entry of restrictions on transfer of property is constitutionally permissible.

[29] In Musson, 802 F.2d 384 (10th Cir. 1986), the court upheld the federal statute on which these provisions of bill are based against various constitutional challenges. The Musson court rejected claims that the defendant was entitled to an evidentiary hearing on a restraining order entered after an indictment was issued and that due process does not require such a hearing.

order is to be entered. A pre-indictment order is only effective for 90 days unless the court extends it for good cause.

The bill provides for a temporary restraining order without notice or a hearing when an information or indictment has not yet been filed with respect to the property and the state demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture.

A temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause. A hearing requested concerning an order must be held at the earliest possible time prior to the expiration of the temporary order. At such a hearing, the court may receive and consider evidence and information that would be inadmissible under the Florida Rules of Evidence.[30]

Procedure for a Hearing to Allow Bona Fide Purchasers to Reclaim Forfeited Property

The bill provides a mechanism for a person other than the defendant to assert an interest in property that has been ordered forfeited to the state.[31],[32]

It requires the state to publish notice of the forfeiture order and of its intent to dispose of the property. The state may also provide direct written notice to any person known to have alleged an interest in the property. A person may petition for a hearing within 30 days of publication or receipt of notice, whichever is earlier. The petition must be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

The hearing is held before the court without a jury.[33] The hearing on the petition shall be held within 30 days (if practicable) after the filing of the petition. At the hearing, the state and the petitioner may present evidence and witnesses. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

The petitioner must show either:

(1) a legal right, title, or interest in the property and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(2) that the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

If the petitioner makes the appropriate showing, the court must amend the forfeiture order. Once the court has disposed of all petitions or if no such petitions are filed, the state shall have clear title to

[30] In In re Assets of Parent Industries, 739 F.Supp. 248 (E.D. Pennsylvania June 1, 1990), the court explained that more permissive evidentiary standards in pre-indictment cases are permissible and that the government is not required to reveal its entire RICO case in a pre-indictment hearing.

[31] The defendant is permitted to assert his or her interest during the criminal trial proceedings.

[32] The Musson court noted that the provisions for third party petitions addressed Musson's claim regarding limitations on his ability to sell his property. See Musson, 802 F.2d at 386.

[33] Libretti v. United States, 516 U.S. 29 (1995), holds that there is no Sixth Amendment right to a jury trial in a forfeiture determination.

property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

The bill prohibits parties claiming an interest in property subject to forfeiture from intervening in the trial or appeal of a criminal case or commence an action against the state concerning the validity of a property interest except as provided in the bill.

Assets if Property Subject to Forfeiture is Unavailable

If the property subject to forfeiture is unavailable because the homestead provisions of the Florida Constitution, because it cannot be located, because it has been sold or transferred to a third party, because it has been moved beyond the court's jurisdiction, or has been comingled with other property, the court must order forfeiture of other property up to the value of the unavailable property.

Discovery to Identify or Locate Property Subject to Forfeiture

The bill authorizes the court to enter orders compelling testimony regarding the identification or location of property ordered forfeited after the entry of an order declaring the property forfeited to the state.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., relating to definitions.

Section 2. Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 3. Amends s. 655.50, F.S., relating to the Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.

Section 4. Creates s. 895.011, F.S., relating to statutory construction.

Section 5. Amends s. 895.02, F.S., relating to definitions.

Section 6. Creates s. 895.041, F.S., relating to criminal forfeiture.

Section 7. Amends s. 896.101, F.S., relating to the Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.

Section 8. Amends s. 923.03, F.S., relating to indictment and information.

Section 9. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 10. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is not known. By expanding the definition of "proceeds," there is a possibility the state will be able to capture more proceeds generated through criminal activity. The amount cannot be determined at this time.

There is a potential for more revenue to the state by the use of criminal forfeiture in RICO cases. That amount, if any, is not known.

The provisions relating to criminal forfeiture will require an unknown number of hearings in circuit court. The costs of those additional hearings are not known.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   The substantive portion of this analysis notes constitutional issues that have been raised and rejected by various federal courts regarding the federal criminal forfeiture law on which the criminal forfeiture statutes are based. Specifically, courts have rejected claims relating to notice, the denial of the right to a jury trial, violation of the ex post facto clause[34], the right to a pre-indictment hearing, the burden of proof in a criminal forfeiture case, and the ability of a defendant to sell his property.

B. RULE-MAKING AUTHORITY:

The bill gives the Attorney General the authority to adopt rules relating to notice to persons who may have an interest in property ordered forfeited, granting petitions for remission or mitigation, the disposition of property forfeited to the state, and related matters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 176-77 contain a reference to a hearing pursuant to subsection (1). No hearing is provided in subsection (1). The appropriate reference appears to be to the hearing provisions in subsection (12).

Line 349 contains a reference to subsection (1) that also appears to refer to subsection (12).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[34] See United States v. Reed, 924 F.2d 1014 (11th Cir. 1991).