

1989

## Session Law 89-307

Florida Senate & House of Representatives

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**H 610 GENERAL BILL/CS by Criminal Justice; Peoples and others  
(Similar S 871)**

**State Attorney's Forfeiture T.E.:** creates State Attorney's Forfeiture & Investigative Support Trust Fund; provides for deposit of certain funds obtained through forfeiture proceedings into such trust funds; provides for division of certain forfeited funds. Amends 932.704; creates 27.3451. Effective Date: 07/05/89.

03/09/89 HOUSE Prefiled  
03/14/89 HOUSE Referred to Criminal Justice; Appropriations  
03/24/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment  
04/04/89 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 62; Subreferred to Subcommittee on Prosecution and Punishment  
04/11/89 HOUSE On Committee agenda—Criminal Justice, 04/13/89, 8:00 am, 21-HOB—For ratification of referral to subcommittee  
04/28/89 HOUSE On Committee agenda—Criminal Justice, 05/02/89, 8:30 am, 21-HOB—to be withdrawn from subcommittee  
05/02/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS  
05/10/89 HOUSE Comm. Report: CS by Criminal Justice -HJ 458; CS read first time -HJ 456; Now in Appropriations -HJ 458  
05/17/89 HOUSE Withdrawn from Appropriations -HJ 514; Placed on Calendar  
05/26/89 HOUSE Placed on Consent Calendar; Read second time; Read third time; CS passed; YEAS 110 NAYS 0 -HJ 683  
05/26/89 SENATE In Messages  
05/30/89 SENATE Received, referred to Judiciary-Civil; Finance, Taxation and Claims; Appropriations -SJ 561  
06/02/89 SENATE Withdrawn from Judiciary-Civil; Finance, Taxation and Claims; Appropriations; Substituted for SB 871; CS passed; YEAS 35 NAYS 0 -SJ 895  
06/02/89 Ordered enrolled  
06/20/89 Signed by Officers and presented to Governor  
07/05/89 Approved by Governor; Chapter No. 89-307

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0610b.cj  
DATE: June 30, 1989

HOUSE OF REPRESENTATIVES  
COMMITTEE ON CRIMINAL JUSTICE  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 610

RELATING TO: Forfeitures

SPONSOR(S): Criminal Justice, Representative Peeples and others

EFFECTIVE DATE: The latter of July 1, 1989 or upon becoming a law.

DATE BECAME LAW: July 5, 1989

CHAPTER #: 89-307, Laws of Florida

COMPANION BILL(S): SB 871

OTHER COMMITTEES OF REFERENCE: (1) Appropriations  
(2)

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I. SUMMARY:

A. PRESENT SITUATION:

Property forfeited under the Florida Contraband Forfeiture Act can either be sold or retained by the law enforcement agency effecting the forfeiture. If sold, the proceeds of the sale shall first be applied to payment of the balance due on any lien preserved by the court; second to costs incurred by the seizing agency for storage, maintenance, security and forfeiture of such property; and third to court costs. The remainder shall be deposited into a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. The funds and interest shall be spent on school resource officer, crime prevention, or drug education programs or other law enforcement purposes. In order to spend these funds, the sheriff or chief of police must make a request, and upon appropriation by the appropriate governing body. These funds can also be used to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise.

When a seizing agency is a state agency, the proceeds shall be deposited into the General Revenue Fund, unless the seizing agency is the Florida Department of Law Enforcement, then the funds shall be deposited into the Forfeiture and Investigative Support Trust Fund. When the seizing agency is the Department of Natural Resources, the proceeds shall be deposited into the Motorboat Revolving Trust Fund to be used for law enforcement purposes.

If more than one agency was substantially involved in effecting the forfeiture, the court shall equitably distribute the money among the seizing agencies.

B. EFFECT OF PROPOSED CHANGES:

This bill would create a State Attorney Forfeiture and Investigative Support Trust Fund. When the state attorney is a seizing agency under the Florida Contraband Forfeiture Act, the proceeds accrued pursuant to the seizure shall be deposited into the trust fund to be used for the investigation of crime, prosecution of criminals, or other law enforcement purposes, within that state attorney's judicial circuit.

These funds can be used when appropriated, or when approved by action of the Executive Office of the Governor, pursuant to s. 216.181(9), F. S.

In addition, if the Department of Natural Resources, together with a state attorney's office, are substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the proceeds to the Motorboat Revolving Trust Fund and the State Attorney's Forfeiture and Investigative Support Trust Fund.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 creates a State Attorney's Forfeiture and Investigative Support Trust Fund.

Section 2 provides that if the state attorney is the seizing agency, the proceeds shall be deposited into the State Attorney's Forfeiture and Investigative Support Trust Fund.

Section 3 provides an effective date of the latter of July 1, 1989 or upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

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4. Appropriations Consequences:

When a seizing agency is a state attorney's office, the funds currently would be deposited into the General Revenue fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

Forfeiture funds that normally would go into General Revenue could be placed into the State Attorney's forfeiture trust fund.

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

This bill is consistent with the Committee Mission statement in that allows for the effective and responsible operation of the criminal justice system.

This bill is supported by the State Attorney's Coordination Office.

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V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

*Susan G. Bisbee*  
Susan G. Bisbee

Staff Director:

*Robin S. Hassler*  
Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

\_\_\_\_\_

Staff Director:

\_\_\_\_\_

APPROPRIATIONS:

Prepared by:

\_\_\_\_\_

Staff Director:

\_\_\_\_\_

REVISED: \_\_\_\_\_

BILL NO. SB 871DATE: April 20, 1989Page 1

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Lang</u> <i>ML</i>	<u>Smawley</u> <i>ES</i>	1. <u>JCI</u>	<u>Favorable</u>
2. _____	_____	2. <u>FTC</u>	_____
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

State Attorney's Forfeiture  
T. F.

BILL NO. AND SPONSOR:

SB 871 by  
Senator WeinsteinI. SUMMARY:

## A. Present Situation:

An investigator employed by a state attorney on a full-time basis, is a law enforcement officer of the state with full powers of arrest throughout the judicial circuit. s. 27.255, F.S. Such an investigator has full authority to serve any arrest warrant, search warrant, witness subpoena, *capias*, or court order when it is directed to him. *Id.* A special investigator appointed by the state attorney pursuant to s. 27.251, F.S., has the same powers. *Id.*

Sections 932.701-932.704, F.S., comprise the Florida Contraband Forfeiture Act. The act provides for the forfeiture of personal property to a law enforcement agency, and the sale of such property by such agency, when the property was seized by the agency because of its use, or attempted use, in violation of the laws dealing with contraband. The state attorney within whose jurisdiction the personal property was seized, or an attorney employed by the seizing agency, is responsible for initiating proceedings for the forfeiture of the property to the seizing agency. s. 932.704(1), F.S.

Section 932.704(3), F.S., provides for the sale by a law enforcement agency of personal property forfeited to it, and for the distribution of the proceeds of such sale. If the seizing law enforcement agency is a state agency, the proceeds remaining after the satisfaction of liens and the payment of costs must be deposited in the state General Revenue Fund. *Id.*

Exceptions are provided to the general mandate that the proceeds of property sold after seizure by a state agency are to be deposited into the General Revenue Fund. If the seizing law enforcement agency is the Department of Law Enforcement, the proceeds are to be deposited into the Forfeiture and Investigative Support Trust Fund. *Id.* Moneys in that fund are to be appropriated by the Legislature, pursuant to the provisions of ch. 216, F.S., for purposes deemed appropriate by the Legislature. s. 943.362, F.S. If the seizing agency is the Department of Natural Resources, the proceeds are to be deposited into the Motorboat Revolving Trust Fund to be used for law enforcement purposes. s. 932.704(3), F.S. The Department of Highway Safety and Motor Vehicles also has a separate trust fund into which it may deposit revenues received as a result of forfeiture proceedings. s. 932.705, F.S.

When more than one law enforcement agency is substantially involved in effecting the forfeiture, the court is to equitably distribute the property among the seizing agencies. s. 932.704(3), F.S. In the event that the seizing law enforcement agency is a state agency, the court is to direct that all the forfeited money or currency and all proceeds are to be deposited into the General Revenue Fund, unless the seizing

agency is the Department of Natural Resources, in which case, the court is to direct that the proceeds be deposited into the Motorboat Revolving Trust Fund. Id.

Chapter 895, F.S., is the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. All property, real or personal, including money, used in the course of, derived from, or realized through conduct in violation of the provisions of the chapter is subject to civil forfeiture to the state. s. 895.05, F.S. The state is to dispose of the forfeited property and distribute the proceeds in accordance with the provisions of s. 895.09, F.S.

Section 895.09, F.S., (1988 Supp.), establishes the order of priority in which the proceeds are to be distributed. The state attorney, if it is the investigative agency bringing the RICO civil forfeiture proceeding, has a priority claim to the proceeds from the sale of the property. Id. Subject to higher priority claims on the proceeds, the state attorney is entitled to a certain percentage of the proceeds which is to be deposited into the Civil RICO Trust Fund. s. 27.345, F.S. Each state attorney has a Civil RICO Trust Fund. Id.

Law enforcement agencies other than the investigative agency bringing the proceeding, i.e., law enforcement agencies other than the state attorney or the Attorney General, also have a priority claim in the proceeds. s. 895.09, F.S. Such agencies have a lower priority claim than the investigative agency initiating the civil forfeiture proceeding.

**B. Effect of Proposed Changes:**

The bill would allow the state attorney, as a seizing law enforcement agency, to deposit the proceeds of a forfeiture sale, under the Florida Contraband Forfeiture Act, into a local state attorney's trust fund. The moneys in the trust fund could be used by the state attorney for the investigation of crime and the prosecution of criminals. Under current law, the state attorney must deposit forfeiture proceeds into the General Revenue Fund.

Specifically, the bill would amend s. 932.704, F.S., to provide that if the seizing law enforcement agency under the Florida Contraband Forfeiture Act is a state attorney's office acting within its judicial circuit, the proceeds from a sale made pursuant to a forfeiture proceeding would be deposited into the State Attorney's Forfeiture and Investigative Trust Fund. Money in the Trust Fund would be used for the investigation of crime and the prosecution of criminals. The bill would establish such a trust fund in each state attorney's office in each judicial circuit in the state.

The bill would provide that if the seizing agency is the state attorney's office, the court must direct that the proceeds be deposited into the newly created trust fund. If the state attorney's office and the Department of Natural Resources are substantially involved in effecting the forfeiture, the court would equitably distribute the proceeds to the Motorboat Revolving Trust Fund and the State Attorney's Forfeiture and Investigative Support Trust Fund.

**II. ECONOMIC IMPACT AND FISCAL NOTE:**

**A. Public:**

None.

**B. Government:**



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The Department of Natural Resources would be required to share the proceeds when it and the state attorney are substantially involved in effecting the forfeiture.

III. COMMENTS:

The current practice when more than one law enforcement agency is involved in a seizure is that the agencies will come to an agreement on the distribution of the property, cash, or proceeds based upon each agency's level of participation in the seizure. The agreement then is presented to the court for its approval. This practice is followed regardless of the agencies involved, i.e., whether they are all state agencies, all local agencies, or some combination.

Given the provisions of s. 27.255, F.S., an investigator employed by a state attorney may seize property pursuant to his powers as a law enforcement officer. An investigator's powers extend throughout the circuit. Id. Most circuits encompass more than one county, thus a state attorney's investigator can act on a regional basis.

The bill may provide an incentive for a state attorney to expand the number of investigators he employs and more aggressively engage in law enforcement activities traditionally carried out by others. Thus, the traditional role of the state attorney as the prosecuting officer in the circuit, Art. V, s. 17, Fla. Const., may be expanded.

None.

IV. AMENDMENTS:

None.