

# The Ledger

## Florida Senate bill to reform property seizure

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A new law signed Friday by Gov. Rick Scott limits the way law enforcement can obtain forfeiture funds has local agencies concerned.

Proponents of Senate Bill 1044, introduced by Sen. Jeff Brandes, R-St. Petersburg, said it will protect property rights while adding accountability to law enforcement agencies. Opponents on the other hand, like Polk Sheriff Grady Judd, say the new law puts an added burden on the taxpayer, takes from community programs and protects criminals.

Forfeiture funds are property or money that can be seized by a law enforcement agency if it was obtained through a criminal act, such as selling drugs or gambling. To obtain the property, agencies pay a filing fee and then must show probable cause. How the funds are spent have to be finalized by each department's governing commission or council.

“I think if you look around the libertarian circle, you have broad agreement from the ACLU to the Cato Institute,” said Brandes. “It's a major property rights issue when you can have assets seized without committing a crime.”

Under the new law, the filing fee to obtain the funds will be raised to a minimum of \$1,000 and a bond of \$1,500 will be put on the property. Brandes said, in many cases, the accused didn't have money to hire an attorney to fight the seizures. The bond now goes to pay attorney fees for the accused in the event they win their case(s).

“Ninety-eight percent of the time, the defendant wouldn't show up because they couldn't afford to hire an attorney,” Brandes said. “Attorneys weren't taking these cases because there was so little in it.”

Judd said Brandes and Sen. Joe Negron, R-Palm City, a co-sponsor of the bill, have law backgrounds and attorneys have the most to gain from the new law. Judd added that legislators gained support for the law by highlighting examples of mishandled seizures by law enforcement, but Judd said most of those examples did not happen in Florida.

“The whole intent is to make it more difficult for law enforcement,” Judd said. “Neither has any institutional knowledge of why this was put into place.”

Judd said the Florida Contraband Forfeiture Act was put into place in the early 1990s to stop criminals from benefiting financially from criminal acts. Previously, Judd said, criminals like drug dealers would pay cash to expensive lawyers to fight their cases. Judd added that the current law has a high standard to obtain the seized property.

“Once we seize the money, we have to go through a long process,” Judd said. “We're limited with what we can use the money on. Not one penny goes to operating procedures. I agree there must be due process, but it was in place and it was working in Florida. That's why they had to go outside the state to find those bad examples.”

Before physical property can be seized, the owner must be charged with a crime. If the bill is signed, the burden to show the money was obtained illegally will be raised from "clear and convincing" to "beyond a reasonable doubt".

“That's the highest burden there is,” said Roger Mallory, general counsel for the Lakeland Police Department. “What's going to happen across Florida is agencies aren't going to go after the forfeitures when the cost of the bond is more than the forfeiture. We file some of these just to take guns out of the hands of bad guys.”

Brandes said the feedback he's received, however, has been only positive. The top law enforcement officer at an agency now will have to sign off on any property seized and annual reports must be sent to the Florida Department of Law Enforcement.

“There was no transparency and very little accountability,” said Brandes. “We've designated a number of accountability measures. We've had bipartisan support. We got local sheriffs and police chiefs on board.”

Under the new law, the amount in seized assets that would have to be reinvested into community crime prevention would be raised from 15 percent to 25 percent. Local law enforcement officials say they're not bothered by that aspect, but they expect those programs to take a hit as a result of the new law. Mallory said the new minimum \$1,000 filing fee will be about three times the previous fee.

LPD has seized about \$116,000 so far this fiscal year and last year, it donated more than \$50,000 to organizations including the NAACP, Talbot House, New Life Outreach and Career Source Polk for assistance and prevention programs. Mallory said if the new law is signed, those organizations will suffer.

“If we take in less money, there's going to be less going out,” he said. “There is a fiscal impact for us.”

The Winter Haven Police Department seized about \$19,500 in 2015 and more than half went to youth prevention programs like DARE and the department's Explorer program, which introduces youth to daily law enforcement activities.

“The majority of our funds are used for programs that are pumped back into the community,” said Charlie Bird, Winter Haven Police chief and president of the Polk County Police Chiefs Association. “We can use the forfeiture funds for some equipment we're unable to budget for. It's not what everyone thinks, that it's just some cash cow.”

Bird said some of the drug and crime prevention programs his department supports with forfeiture funds serve children who live in rough neighborhoods.

“Kids in the community are seeing drug dealers driving around in nice cars and flashing money and they look up to that,” Bird said. “These programs teach them that there is a better way. We're not going around on a seizing frenzy. The money we use is from a drug dealer. We've got to have a balance. Otherwise, we're fighting a losing battle.”

With forfeiture funds, agencies can purchase equipment outside the budget. In some cases, Judd said, the equipment is imperative. Judd said if it becomes more difficult to seize “ill-gotten” money, an extra burden will fall on the taxpayers.

“We can't pay salaries or electric bills with this,” the sheriff said. “We used forfeiture funds to put (defibrillators) in our cars and for the lives it saved, it didn't cost taxpayers anything. Brandes and Negrón would rather have the taxpayers pay for this equipment than the drug dealers.”

Judd said smaller agencies with tight budgets and fewer assets to pursue the seizures that will be hurt the most by the new law. Davenport Police Chief Larry Holden said his city is already limited on what it can pursue with a small budget and the new law will make it more difficult.

“There will be some things we can't pursue with the added costs,” Holden said. “I think it's giving money back to criminals.”

Officials in Haines City and Lake Wales each said they aren't proponents, but don't see the new law as burdensome.

“There may be some procedural changes for us, but we already have a pretty high standard for what we proceed with,” said Lake Wales Lt. Joe VanBlarcom. “I'm sure most agencies statewide are going to look a little closer to what they (pursue).”

Over the last 12 months, the Lake Wales Police Department took in about \$38,000. The Haines City Police Department took in about \$33,000 last fiscal year, which went to programs like Shop with a Cop and SAVE.

“A lot of it is spent on community educational stuff,” said Rick Sloan, director of public safety in Haines City. “We get some equipment we're not able to budget for. Realistically for us, it is what it is.”

The law passed unanimously March 8 and needs the governor's signature to be finalized. If that happens, it will go into effect July 1.

“It's been overwhelmingly supported,” Brandes said. “People are appalled your assets can be seized without a crime being charged. The key for me is we've created a bright line. Law enforcement now knows what they can seize and what they can't. This was a hard-fought win and it's great for property rights.”