

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>P.O.</i>	<u>Liepshutz</u> <i>MLM</i>	1. <u>JCR</u>	<u>Fav/CS</u>
2. _____	_____	2. <u>AP</u>	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

RICO Act

BILL NO. AND SPONSOR:

CS/SB 833 by
Judiciary-Criminal Committee
and Senator Crawford

I. SUMMARY:

A. Present Situation:

A violation occurs under the Florida Racketeer Influenced and Corrupt Organization Act (RICO), Chapter 895, F.S., when a person, through a pattern of racketeering activity, acquires or maintains an interest in or control of an enterprise or real property; participates in an enterprise; or conspires to do any of the above. "Pattern of racketeering" requires at least two interrelated racketeering acts occurring within five years of each other. "Racketeering activity" includes crimes chargeable under the federal RICO statute, crimes chargeable under 17 chapters and 27 sections of the Florida Statutes (predominantly felony offenses), and attempt, conspiracy, or a solicitation of another to commit any of these predicate crimes. The RICO statute provides criminal penalties as well as civil remedies for engaging in racketeering activity. ss. 895.04, 895.05, F.S.

The most significant civil remedy is the forfeiture of all real or personal property used or intended for use in the course of, derived from or realized through racketeering activity. The statutory mechanism for initiating the civil forfeiture action is called a RICO lien notice. Once any civil RICO proceeding is instituted against the racketeer, the Department of Legal Affairs (DLA) or a state attorney may file a RICO lien notice which creates a lien in favor of the state against the racketeer's real property or his beneficial interest in such real property located in the county where the notice is filed. s. 895.07, F.S.

The DLA may also apply ex parte (without notice to any person adversely interested) to a circuit court for an order authorizing the filing of a RICO lien notice against real property when probable cause exists that the property was used in racketeering activity, instead of having to wait until the civil forfeiture proceedings are instituted. The owner of the property can thereafter petition the court to immediately dissolve the lien when he successfully disputes the existence of probable cause, or when he successfully demonstrates that he has no knowledge that the property was used for racketeering activity. s. 895.05(12), F.S.

The DLA and state attorneys are all defined as "investigative agencies" under RICO; therefore, all are authorized to administer oaths, collect evidence, and issue subpoenas, including "confidential subpoenas." s. 895.06(3), F.S.

B. Effect of Proposed Changes:

CS/SB 833 would expand the list of predicate offenses constituting "racketeering activity" to include offenses

relating to: securities investor protection; felony violations of currency transaction reporting law; computer-related crimes; commercial sexual exploitation of children; extortion; retaliation against witnesses, victims, or informants; and tampering with or fabricating physical evidence. Reference to a repealed statute relating to gambling and to an obsolete statute relating to tampering would be deleted.

The CS would also clarify that the definition of "RICO lien notice" would include a lien notice which was filed ex parte upon probable cause that the property was used in racketeering activity. The Office of Statewide Prosecution and the state attorneys would now be able to file a RICO lien notice ex parte upon probable cause that the property was used in racketeering activity. (Currently, only the DLA is authorized to do this.) When this notice was filed, it would be considered notice to and knowledge by the owner that the property was used in or derived from a RICO violation; therefore, lack of such notice would not be a defense in any subsequent RICO proceeding.

"Investigative agency" would be expanded to include the Office of Statewide Prosecution so that it, along with the DLA and the state attorneys, could issue civil investigative subpoenas.

CS/SB 833 would allow local governments to pay the salary of assistant state attorneys specializing in prosecuting RICO actions originating in that particular county or municipality. (Local governments can currently do this for attorneys prosecuting exclusively special law or ordinance violations.)

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, there would be no significant impact.

Although there would be a cost to local governments choosing to pay the salary of local "RICO prosecutors," presumably this would be offset by the savings to the county due to increased RICO prosecutions.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: HB 945/sa

Date: April 22, 1987

Revised: May 13, 1987

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

BILL #: CS/HB 945

RELATING TO: RICO; additional offenses

SPONSOR(S): Representative Lippman

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): SB 833

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

A. Present Situation

Chapter 895, F.S., establishes the Florida Racketeer Influenced and Corrupt Organization act which authorizes civil and criminal penalties for engaging in certain activities which demonstrate a pattern of racketeering activity.

Section 895.02, F.S., contains a list of "predicate crimes" which trigger the civil and criminal penalties of the RICO act.

Section 27.34, F.S., authorizes a county or municipality to contribute to the salary of an assistant state attorney whose sole function is to prosecute violations of laws or ordinances of the county or municipality.

Section 895.05 (12), F.S., authorizes the Department of Legal Affairs to apply for RICO liens and describes the procedures for noticing the owners of the property against which such lien is filed.

B. Effect of Proposed Changes

CS/HB 945 adds reference to several predicate crimes which reflect known or likely new areas for organized crime activity including:

- 1) investor protection under the securities law, chapter 517, F.S.,
- 2) money laundering under s. 655,50, F.S.,
- 3) computer - related crimes under chapter 815, F.S.,
- 4) Sexual exploitation of children under s. 827.701, F.S.

- 5) extortion under s. 836.05, F.S., and
- 6) retaliation against witnesses, victims or informants under s. 914.23, F.S.

The definition of "RICO lien notice" is amended to insure that a probable cause lien relates back to the date of its filing under s. 895.05(12) F.S.

This bill amends s. 27.34, F.S. to authorize a county or municipality to contribute to the salary of one or more assistant state attorneys who investigate and prosecute RICO actions.

The bill also amends s. 895.05, F.S., to authorize the Statewide Prosecutor and state attorneys to file RICO liens against property and provides that filing of the lien constitutes notice to the owner of the property

II. ECONOMIC IMPACT:

A. Public:

Indeterminate

B. Government:

Indeterminate

III. STATE COMPREHENSIVE PLAN IMPACT:

The bill is consistent with policies 9, 14, and 15 of s. 187.201(7)(b), F.S., which emphasizes protection against economic crimes and organized crime activities.

IV. COMMENTS:

The Department of Legal Affairs and the Department of Law Enforcement support this bill.

V. AMENDMENTS:

VI. PREPARED BY: Bill Ryan 

VII. STAFF DIRECTOR: Bill Ryan

BR/vrj