

STORAGE NAME: h3303.cjc

DATE: March 2, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3303

RELATING TO: County Court Assessments

SPONSOR(S): Representative Brown

COMPANION BILL(S): SB 200 (similar), HB 1589 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS
 - (2) COMMUNITY AFFAIRS
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill substantially amends s. 34.191, F.S. It authorizes a county to assign the collection of past due fines and court costs to a private attorney or collection agency. The county is authorized to add a fee to the past due balance to offset collection costs.

This bill has no fiscal impact on state government. The bill may enhance the ability of local governments to collect court costs and fines.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. **Collection of Fines and Forfeitures** - Section 34.191, F.S., provides that all fines and forfeitures arising from offenses tried in county court must be collected and accounted for by the clerk of court. Fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipality must be paid monthly to the county or municipality, as appropriate, except as provided in s. 318.21 or s. 943.25, Florida Statutes.

In 1991, the Auditor General issued a report estimating that only 5% of fines and fees assessed by circuit courts in nine counties in FY 1988-89 were collected. The collection rates for fines and fees assessed by county and traffic courts over the same period were higher - an estimated 74% and 79%, respectively. Summary information on the amount of fines and fees assessed and collected statewide was not available, as the Clerks of the Court are not required by law to gather and report this information.

Collection of unpaid fines and forfeitures levied in county and circuit courts is problematic. The Clerks of Court, probation organizations, and the Department of Corrections are required to initiate certain actions to recover uncollected fines and fees. The 1991 Auditor General report identified various collection actions undertaken by these entities. In the nine county group profiled in the report, initiation of collection action was taken on 67% of these cases, and resulted in the collection of 43% of the assessed fines and fees.

Some county commissions use in-house resources or contract with private collection agencies to pursue fines and forfeitures imposed by county courts. However, it appears that there is little incentive for a county commission to pursue these unpaid debts because collection service charges may approximate the counties' portion of fine and forfeiture revenue. The statutes specifically state how such revenue is to be distributed and do not allow for a proration of the collection costs between recipients of the fine and forfeiture revenue.

2. **Statutory Authority to Contract with Collection Agencies** - In certain cases, the statutes provide specific authority for state or local governments to contract with collection agencies. Pursuant to s. 938.29, F.S., the board of county commissioners is required to enforce debts or liens imposed by the court against certain defendants in criminal actions who have received services of a public defender or an appointed attorney and who have been assessed attorneys' fees and costs. Under certain situations, the county is authorized to contract with a collection agency for collection of such debts or liens. The collection fee is deducted from the collected debt.

Pursuant to s. 17.20, F.S., the Department of Banking and Finance is authorized to use a collection agency to pursue claims for state attorneys. The Department is authorized to pay for collection services by authorizing either the agency to deduct the fee from the amount collected, to bill the state, county, or special district for the collection, or to add a fee to the amount collected.

3. **Regulation of Collection Agencies** - Pursuant to Parts V and VI of Chapter 559, F.S., commercial and consumer collection agencies, respectively, must register with the Department of Banking and Finance. Attorneys who are primarily engaged in the collection of commercial claims must be registered as a commercial collection agent with the department. Collection agencies must maintain a surety bond. The Division of Consumer Services of the department is responsible for registering and investigating consumer complaints, and if warranted, revoking the registration of consumer collection agencies.

On 12/31/97, there were 60 commercial collection agencies and 692 consumer collection agencies registered with the department.

B. EFFECT OF PROPOSED CHANGES:

This bill authorizes a county to assign the collection of past due fines and costs levied in county court to a private attorney or collection agency. Fines, court costs, or other cost imposed by the court, may be so assigned if they are 90 days or more past due and if the board of county commissioners determines that assignment is cost-effective and follows established bid practices. The attorney or collection agency must be licensed or registered in the state.

The county may authorize a fee to be added to the past due balance to offset collection costs.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

This bill allows a county to turn to private agencies to assist with the collection of past due fines and costs levied in county court.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Under this bill, private collection agencies would perform functions currently performed by Clerks of Court, probation organizations, and the Department of Corrections.

- (3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

This bill would allow collection duties of the Clerks of Court, probation organizations, and the Department of Corrections to be assigned to private collection agencies and attorneys.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

This bill allows the addition of a fee to certain past-due fines and costs.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

This bill would allow the county to authorize a fee to be added to the past due balance to offset collection costs.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Under certain circumstances this bill will allow private collection agencies and attorneys to pursue past due balances that they are currently prohibited from pursuing.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 34.191, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Provides that a county commission may assign the collection of fines and court costs levied in county court to a private attorney or collection agency; establishes guidelines; allows the addition of a fee.

Section 2. Establishes an effective date of July 1 of the year in which the bill is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

To the extent that attorneys or private collection agencies are successful in collecting past due fines, court costs, and other costs imposed by the county court, county and municipal governments will benefit from this new authority.

3. Long Run Effects Other Than Normal Growth:

This bill could lead to higher collection rates of fines and costs levied in county courts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Certain attorneys and private collection agencies could benefit if they are given the authority to pursue unpaid fines and costs.

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

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

Key Issues - This subsection uses a question format to stimulate debate about the joint resolution under review.

1. **Question Presented** - *Whether counties should be permitted to assign certain debt collection activities to private collection agencies or attorneys.*

2. **Other Policy Considerations:**

- a. Will the system proposed under this bill lead to higher rates of collection?
- b. Will the incentives proposed by this bill be sufficient to motivate private agencies and attorneys to undertake collection activities? Are any abuses likely to occur as a result of overzealous collection activities or are existing regulations sufficient to constrain such activities.
- c. Could the collection fee authorized by this bill be construed as an ex post facto penalty against criminal defendants convicted before the new fee authority went into effect, or would the additional fee merely represent a civil action necessary to recover debt? Note: initiation of collection activity is contingent upon a new action by the defendant - failure to pay the court imposed debt - and the assessment of a collection fee would not be a part of the sentence.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

Legislative Research Director:

Charles R. Boning

Richard Hixson