

STORAGE NAME: h0567a.ga

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL APPROPRIATIONS
ANALYSIS**

BILL #: HB 567

RELATING TO: State Agencies/Administrative Fines

SPONSOR(S): Representative Minton and others

COMPANION BILL(S): SB 760 (compare)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 7 NAYS 0
- (3) FINANCE & TAXATION (W/D)
- (4) GENERAL APPROPRIATIONS YEAS 21 NAYS 0
- (5)

I. SUMMARY:

This bill provides that proceeds from any fines levied and collected by an agency of the executive branch shall be deposited into the General Revenue Fund, rather than into a fund currently designated by law.

This bill also provides that any fine, penalty or settlement agreement costs collected by an agency in the executive branch must be implemented from specific statutory authority. If such authority is referenced in rule, then the authorizing language shall reflect the recommendations and requirements of the Administrative Procedure Act.

In fiscal year 1997-1998, executive agencies reported \$191,851,933 in fines and penalties, including overweight penalties, late fees, sale of confiscated and forfeited property, and restitution and investigative costs. (From the state accounting system, SAMAS.)

This bill provides an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Agencies levy and collect fines for violations of statutory provisions or administrative rules by a regulated party. Such fines are appropriated by the Legislature in the annual appropriations process to particular programs or activities and are based upon estimates of collected amounts submitted by the agencies. Upon collection by an agency, the fines are deposited into a specific trust fund as directed by law. Proceeds from fines, forfeitures, judgments and settlements collected in excess of the appropriated amount are deposited into the general revenue fund.

The general index to the Florida Statutes (1997) lists over 500 entries under the term "fines and penalties." The total amount collected in fines, forfeitures and judgments by state agencies in Florida in FY 1997-98 was \$187 million, or .44% of total appropriations (excluding \$149 million from the tobacco settlement moneys). Proceeds are directed by law to specific trust funds for specific purposes.

Administrative agencies may not impose fines or penalties except as provided by law, Fla. Const., Art. 1 sec. 18. See also, Op. Att'y Gen. 85-44. No agency has "authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules." Sec. 120.54 (1)(e), F.S.

Administrative agency rules must be adopted pursuant to the APA. "Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section." Sec. 120.54 (1)(a), F.S.

The Florida Administrative Procedure Act authorizes agencies to seek enforcement through civil actions in court. "Any agency may seek enforcement of an action by filing for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located." Sec. 120.69 (1)(a), F.S. Agencies may also seek enforcement through informal disposition procedures. "Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." Sec. 120.57 (4), F.S. However, an agency may not settle such action if the settlement would obligate the state or an agency to expend funds except under certain conditions. Sec. 45.062 (1), F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill provides that proceeds from any fines levied and collected by an agency of the executive branch shall be deposited into the general revenue fund, rather than into a trust fund currently designated by law. The transfer of funds increases competition for limited General Revenue dollars. Programs that receive earmarked funds now would compete for funds to maintain a certain level of funding. However, by prohibiting the deposit of dollars into a trust fund by an executive agency, the Legislature increases the available funds in General Revenue.

This bill also provides that any fine, penalty or settlement agreement costs collected by an agency must be implemented from specific statutory authority, and if referenced in rule, such rule must be adopted pursuant to Ch. 120, F.S.

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?

No. Section 2 of the bill reiterates the law under Ch. 120, F.S., that rules must have specific statutory authority for imposing fines or penalties and that agencies have the

power to seek enforcement through civil actions, informal disposition procedures and settlements.

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

N/A

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

N/A

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

The bill does not eliminate or reduce an agency or program.

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

N/A

- (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?

N/A

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

N/A

- 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?

N/A

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?

N/A

- 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:

The bill affects those statutes that direct the deposit of fines collected by an agency into a specific trust fund. The general index to the Florida Statutes (1997) lists over 500 entries under the term "fines and penalties."

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides for the deposit of proceeds from levied and collected funds into the General Revenue Fund by agencies of the executive branch.

Section 2. Provides that any fine, penalty or settlement agreement costs collected by an agency in the executive branch must be implemented from specific statutory authority. If such authority is referenced in rule, then the authorizing language shall reflect the recommendations and requirements of the Administrative Procedure Act (APA). In addition, such costs may not be imposed based solely upon program guidance or agency policy.

Section 3. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate. The effective date of July 1, 2000, provides minimal time for agencies to make budget projections and adjust their FY 2000-2001 legislative budget requests, which must be submitted to the Legislature by September 1, 1999, pursuant to Ch. 216, F.S.

2. Recurring Effects:

Fines & Penalties Deposited to Trust Funds -- FY 97-98 Departments with Fines & Penalties > \$1 Million	Total All Fines/Penalties
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Environmental Protection	\$ 4,483,728
Legal Affairs/Attorney General	\$ 36,049,396
Agriculture/Consumer Services	\$ 1,163,208
Banking & Finance/Comptroller State	\$ 1,887,138
Insurance/Treasurer	\$ 23,264,661
Community Affairs	\$ 18,836,823
Labor & Employment Security	\$ 1,176,238
Transportation	\$ 3,023,267
Health	\$ 12,212,924
Agency for Health Care Administration	\$ 1,006,155
Florida Department of Law Enforcement	\$ 1,370,780
	\$ 5,216,403

Highway Safety & Motor Vehicles	\$ 73,752,869
Business & Professional Regulation	\$ 5,089,541
=====	=====
TOTAL to Trust/ All Departments	\$ 191,851,933

Most of the revenues above are subject to the 7 percent General Revenue service charge required by s. 215.20, F.S., thus about \$13 million of the total above is already deposited in the General Revenue Fund. If a program that relies on fines seeks General Revenue funding, it may seek 100 percent of the fine revenue, rather than the 93 percent it currently receives.

Removing a \$12 million recurring revenue stream to the State Transportation Trust Fund will have a \$60 million impact on DOT's 5-year plan.

Depositing fines into the state's general fund may or may not affect the receipt of federal funds by specific programs.

The bill affects the manner by which the legislature appropriates monies from the general revenue fund to the agencies and specific programs which currently rely on proceeds from fines. The bill would decrease revenues to various trust funds and increase revenues to the general revenue fund. In order to maintain existing levels of funding, programs currently funded from the trust funds involved would have to seek new or increased funding from the general revenue fund, placing them in competition with other general revenue funded programs.

The effective date provides limited time for the agencies to prepare their 2000-2001 legislative budget requests.

3. Long Run Effects Other Than Normal Growth:

Any laws requiring fines to be deposited into trust funds that become effective after this bill may be construed as later expressions of legislative intent and therefore override the provisions of this bill.

4. Total Revenues and Expenditures:

See Recurring Effects above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the 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 counties or municipalities have to raise revenue in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Following are comments from the Committee on Governmental Rules and Regulations:

On page 1, line 23, language referencing the Administrative Procedure Act should be amended to include ss. 120.54 and 120.536(1) as the model language for rulemaking authority.

Lobbyists representing the Universities were concerned with the effect of this bill on University parking fines. Under the provisions of the bill, monies collected from parking fines must be deposited into the General Revenue Fund if such funds are already being deposited into the treasury. If these funds are not being deposited into the treasury, and if these fines are not categorized by the University as being "fines," then the University maintains control over the parking fine revenues (the "Pathway to Excellence" legislation passed 10 years ago allows Universities flexibility in categorizing budget codes in SAMAS). Whether or not a University deposits such fines into the treasury depends on the university's unique budget structure.

The worksheet produced by the Fiscal Responsibility Council and attached to this bill reflects all revenues collected from an agency of the executive branch that are categorized as "fines and penalties" by the Office of the Comptroller. The worksheet includes all University revenues categorized as "fines and penalties."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Governmental Rules and Regulations considered this bill on March 8, 1999, and adopted a technical amendment to conform the bill to current practice in identifying grants of rulemaking authority.

On April 16, 1999 the committee on General Appropriations, adopted two amendments. The first of these amends 97 sections of law to delete provisions directing fines collected by various departments and agencies to be deposited into trust funds and places these moneys in the General Revenue Fund. The trust funds affected are :

STORAGE NAME: h0567a.ga

DATE: April 16, 1999

PAGE 8

Additional Court Cost Clearing Trust Fund
Alcoholic Beverage and Tobacco Trust Fund
Anti-Fraud Trust Fund
Brain and Spinal Cord Injury Rehabilitation Trust Fund
Child Support Enforcement Application and Program Revenue Trust Fund
Child Welfare Training Trust Fund
County Article V Trust Fund
County Health Department Trust Fund
Crimes Compensation Trust Fund
Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund
Domestic Violence Trust Fund
Ecosystem Management and Restoration Trust Fund
Educational Certification and Service Trust Fund
Elections Commission Trust Fund
Emergency Medical Services Trust Fund
Employment Security Administration Trust Fund
Epilepsy Services Trust Fund
Executive Branch Lobby Registration Trust Fund
Financial Institutions' Regulatory Trust Fund
Florida Drug, Device, and Cosmetic Trust Fund
Florida Endowment Foundation for Vocational Rehabilitation
Game and Fresh Water Fish Commission's State Game Trust Fund
General Inspection Trust Fund
Grants and Donations Trust Fund in the Agency for Health Care Administration
Grants and Donations Trust Fund in the Department of Children and Family Services
Grants and Donations Trust Fund in the Department of Labor and Employment Security
Health Care Trust Fund
Highway Safety Operating Trust Fund
Hotel and Restaurant Trust Fund
Incidental Trust Fund
Inmate Welfare Trust Fund
Institutional Assessment Trust Fund
Insurance Commissioner's Regulatory Trust Fund
Internal Improvement Trust Fund
Juvenile Justice Training Trust Fund
Marine Resources Conservation Trust Fund
Mental Health Facility Licensing Trust Fund
Minerals Trust Fund
Medical Quality Assurance Trust Fund
Motor Vehicle License Plate Replacement Trust Fund
Nongame Wildlife Trust Fund
Operations and Maintenance Trust Fund in the Department of Children and Family Services
Operating Trust Fund in the Department of Community Affairs
Professional Regulation Trust Fund
Real Estate Recovery Fund
Regulatory Trust Fund in the Department of Banking and Finance
Resident Protection Trust Fund
Solid Waste Management Trust Fund
Substance Abuse Impairment Provider Licensing Trust Fund
Water Quality Assurance Trust Fund
Workers Compensation Administration Trust Fund

The second amendment prohibits agencies from establishing quotas for levying fines. It also requires that any agency performance evaluation that involves fines must be in accordance with written work-performance standards.

STORAGE NAME: h0567a.ga

DATE: April 16, 1999

PAGE 9

VII. SIGNATURES:

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