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DATE: March 3, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
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
- (3) FINANCE & TAXATION
- (4) GENERAL APPROPRIATIONS
- (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.

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) (see Attachment for a worksheet). Proceeds are directed by law to specific trust funds for specific purposes, such as:

Section 475.482, F.S., which directs fines collected by the Florida Real Estate Commission into the Florida Real Estate Recovery Fund to reimburse persons who suffered monetary damages from violations by brokers or salespersons in real property transactions.

Section 376.121, F.S., which directs compensation for damage to natural resources collected by the Department of Environmental Protection into the Florida Coastal Protection Trust Fund to pay for restoration of natural resources.

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. 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 (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:

Indeterminate. The bill would affect 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, forfeitures and judgments. Some agencies and programs rely more on such proceeds as a significant source of revenue than other agencies. 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 some time for the agencies to review their statutory authority to seek enforcement of rules and statutes through fines, forfeitures and judgments.

3. Long Run Effects Other Than Normal Growth:

Indeterminate. This bill would weaken the supposed correlation between agency officials seeking enforcement of laws and rules through fines, forfeitures and judgments up to the appropriated limit and agency officials' knowledge of where the proceeds of such enforcement are directed. If agency officials know that their agency relies on such proceeds as a significant source of revenue for general operations or for desirable programs, such officials may tend to seek enforcement resulting in such proceeds more so than officials who do not know where the proceeds are directed or who do not find the programs appealing.

4. Total Revenues and Expenditures:

Indeterminate. The bill would decrease revenues to various trust funds and increase revenues to the general revenue fund.

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:

The worksheet in the Attachment, prepared by the House Fiscal Responsibility Council, describes in aggregate terms the amount of fines, forfeitures and judgments collected by agencies in the state over the last ten fiscal years, found through a search of the SAMAS database by the Office of the Comptroller. The worksheet shows the total proceeds collected, the percentage change from the prior year, the amount of general revenue, the proceeds as a percentage of general revenue, the amount of total appropriations, and the proceeds as a percentage of total appropriations. Alternate figures for FY 1997-98 include and exclude \$149 million from the tobacco settlement. The SAMAS database does not breakdown the ratio of fines, forfeitures and judgments within that category.

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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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