



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill imposes a \$5 per month on each felony offender that is otherwise subject to assessment by the Department of Corrections.

Promote personal responsibility: Requires certain felony offenders in Hillsborough County to pay \$5 per month for the purpose of offsetting some of the costs of housing state inmate in county jail facilities.

#### B. EFFECT OF PROPOSED CHANGES:

##### **CURRENT SITUATION**

###### Statutory Fee Provision

Currently, s. 948.09(1)(a)1, F.S., requires any person ordered by the court, the Department of Corrections (DOC), or the parole commission to be placed on probation, drug offender probation, community control, parole, control release, provisional release supervision, addiction-recovery supervision, or conditional release supervision under chs. 944<sup>1</sup>, 945<sup>2</sup>, 947<sup>3</sup>, 948<sup>4</sup>, or 958<sup>5</sup>, F.S., or in a pretrial intervention program to pay the DOC, as a condition of any placement, a total sum of money equal to the total month or portion of a month of supervision times the court-ordered amount, but not to exceed the actual per diem cost of the supervision. The DOC must adopt rules by which an offender who pays in full and in advance of regular termination of supervision may receive a reduction in the amount due. The rules must incorporate provisions by which the offender's ability to pay is linked to an established written payment plan. Funds collected from felony offenders may be used to offset costs of the DOC associated with community supervision programs, subject to appropriation by the Legislature.

In addition to any other contribution or surcharge imposed by this section, each felony offender assessed under this paragraph must pay a \$2-per-month surcharge to the DOC. The surcharge is deemed to be paid only after the full amount of any monthly payment required by the established written payment plan has been collected by the DOC. These funds must be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and attendant equipment necessary to train and equip officers who choose to carry a concealed firearm while on duty.

Any person being electronically monitored by the DOC as a result of placement on community control must be required to pay as a surcharge an amount that may not exceed the full cost of the monitoring service in addition to the cost of supervision fee as directed by the sentencing court. The surcharge is deposited in the General Revenue Fund.

The DOC may exempt a person from the payment of all or any part of the contribution if it finds any of the following factors to exist:

- (a) The offender has diligently attempted, but has been unable, to obtain employment which provides him or her sufficient income to make such payments.
- (b) The offender is a student in a school, college, university, or course of career training designed to fit the student for gainful employment. Certification of such student status shall be

<sup>1</sup> Ch. 948, F.S. (State Correctional System).

<sup>2</sup> Ch. 945, F.S. (Department of Corrections)

<sup>3</sup> Ch. 947, F.S. (Parole Commission)

<sup>4</sup> Ch. 948, F.S. (Probation and Community Control)

<sup>5</sup> Ch. 958, F.S. (Youthful Offenders)

supplied to the Secretary of Corrections by the educational institution in which the offender is enrolled.

(c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the secretary.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender.

(f) The offender has been transferred outside the state under an interstate compact adopted pursuant to chapter 949.

(g) There are other extenuating circumstances, as determined by the secretary.

The DOC must establish a payment plan for all costs ordered by the courts for collection by the DOC and a priority order for payments, except that victim restitution payments authorized under s. 948.03(5), F.S., take precedence over all other court-ordered payments. The DOC is not required to disburse cumulative amounts of less than \$10 to individual payees established on this payment plan.

### Hillsborough County

The Board of County Commissioners of Hillsborough County has expressed concerns about the cost to the county of housing felons sentenced to less than one year, state prisoners returned for court appearances, and parole and probation violators confined in county jails.

### **EFFECT OF PROPOSED CHANGES**

The bill provides that, notwithstanding any other provision of law, each felony offender assessed in Hillsborough County (county) in accordance with s. 948.09(1)(a)1., F.S., must simultaneously pay a separate and additional \$5-per-month fee to the Department of Corrections (DOC).

The DOC must remit on a quarterly basis to the Hillsborough County Clerk of the Circuit Court (the "clerk"), as ex officio custodian of the funds of the county, any funds collected, less the costs of administration. The DOC must collect and maintain an accounting of any such fees assessed, any such fees paid by the offender, the cost of administration, and the amount remitted to the clerk and shall report said accounting to the county's board of county commissioners (board) annually.

The clerk must maintain the moneys remitted in a separate special revenue account, invest the funds held on deposit pursuant to general law, and disburse the funds at the direction of the board, less the costs of administration, and the board may appropriate the funds for the sole purpose of offsetting some of the costs of housing state inmates in county jail facilities. The clerk is required to prepare an audit of said special revenue account annually and deliver the audit to the board.

The amount deducted for the costs of administration by the DOC and the clerk may not exceed 3 percent of the total revenue generated by the fee to each, and the amount deducted for the costs of administration may be used only for those costs that are solely and directly attributable to the fee.

### C. SECTION DIRECTORY:

- Section 1. Requires felony offenders assessed under general law to pay a \$5 per month surcharge.
- Section 2. Requires the Department of Corrections to remit proceeds to the county clerk and maintain accountings of the fees, the costs of administration, and the amount remitted to the clerk.
- Section 3. Requires the county clerk to maintain proceeds in a separate account, invest funds, and disburse funds at the direction of the county commission; requires annual audits by the clerk.
- Section 4. Limits costs of administration to 3% or less.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 27, 2005

WHERE? The Tampa Tribune, Tampa, Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

Section 11(a)(4), Article III prohibits special laws pertaining to "punishment for crime." This bill imposes a fee on certain felony offenders in Hillsborough County for the purpose of offsetting some of the costs of housing state inmates in county jail facilities. The question is whether the fee is considered "punishment for crime."

The imposition of costs of probation, without any increase in jail or prison time, is not an impermissible enhancement of punishment. *Johnson v. State*, 502 So.2d 1291 (Fla. 1st DCA 1987). Monetary penalties have not been equated to criminal punishment for purposes of the prohibition against ex post facto laws. Assessment of costs violates ex post facto prohibitions only when the length of an inmate's sentence can be increased by failure to pay the costs. A statute that authorized the assessment of additional court costs against a defendant who pled guilty or nolo contendere to, or was found guilty of, any felony, misdemeanor, or criminal traffic offense did not constitute a criminal penalty, and thus, retroactive application of the statute to defendant did not violate prohibitions against ex post facto laws, where the statute did not subject defendant to criminal penalties such as additional prison time or loss of gain-time for failure to pay the cost. *Ridgeway v. State*, 892 So.2d 538 (Fla. 1st DCA 2005).

Statutes authorizing civil action against prison inmate to recover cost of incarceration did not increase penalty for inmate's crimes, but rather afforded only civil remedies that were not equivalent of criminal punishment, and thus, statutes were not ex post facto on ground that they were enacted after date that inmate committed criminal offenses resulting in his incarceration. *State v. Goad*, 754 So.2d 95 (Fla. 1st DCA 2000).

B. RULE-MAKING AUTHORITY: The bill does not address rule-making authority of the county.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Exemption from General Law.**

The bill provides that, notwithstanding any other provision of law, each felony offender assessed in Hillsborough County (county) in accordance with s. 948.09(1)(a)1., F.S., must simultaneously pay a separate and additional \$5-per-month fee to the Department of Corrections (DOC). Currently, inmates assessed by the DOC under s. 948.09(1)(a)1, F.S., may be exempt by the DOC from the payment of all or any part of the contribution if the DOC finds that certain factors exist. This bill may be considered an exemption from the provision applicable to DOC's determination of an exemption for certain inmates, and any other applicable general law, by virtue of the "notwithstanding" clause.

## **Department of Corrections Comments**

Section 1 adds a separate and additional fee of \$5.00 per month for every offender assessed in Hillsborough County who is ordered to pay cost of supervision to the state in accordance with s. 948.09 (1) (a) 1, F. S.

It is doubtful that s. 948.09(1)(a)(1), F.S., can be used as authority to collect the \$5 fee. As stated in the bill, the \$5 fee is to be collected "for the sole purpose of offsetting some of the costs of housing state inmates in county jail facilities." In contrast, s. 948.09(1)(a)(1), F.S., states that "funds collected from felony offenders may be used to offset costs of the Department of Corrections associated with community supervision programs...". Nowhere in s. 948.09, F.S. is there authority for the Department to collect funds to offset costs of housing state inmates in county jail facilities. As such, the purpose of the fee that is the subject of this bill bears no rational relationship to the legislative intent established by s. 948.09, F.S. Consequently, using s. 948.09, F.S., as authority for this function could violate the due process and equal protection rights of an offender who pays the \$5 fee. See *Joseph v. Henderson*, 834 So.2d 373 (Fla. 2nd DCA 2003).

The \$5 fee that this bill establishes has no correlation to state cost of supervision fees and any exemptions which s. 948.09(3), F.S., applies to cost of supervision would not apply to the % fee. Therefore, the \$5 fee may simply be calculated as \$5.00 per month multiplied by the number of months of the offender's sentence. If the sentencing order requires payment of this separate fee, the obligation can be established as part of the Community Corrections intake process. The obligation would then be automatically collected along with the offender's other obligations as the offender makes payments during the period of supervision.

The department recommends that the reference to s. 948.09(1)(a)1, be removed from section 1 of the bill.

However, it should be noted that deleting the reference to s. 948.09(1)(a)1. may not resolve all of the due process and equal protection concerns involved. Deleting the reference would not take away from the fact that the bill requires offenders to pay monies intended to offset costs of housing inmates. The same reasoning applies in that there is no rational relationship between the two.

Section 2 requires DC to remit funds to the Hillsborough County Clerk of Court on a quarterly basis. Since DC remits existing cost of Supervision fees to the general revenue fund as the fees are collected (usually daily), the court ordered payment system will need to be programmed to collect these fees and hold them for disbursement to the county clerk on a less frequent basis.

The department recommends that this language be changed to remit funds to the Hillsborough County Clerk of Court on a monthly basis instead of a quarterly basis. The department's objective in collecting funds from offenders is to disburse the funds to the payees as quickly as possible. While daily remittances are designed to achieve this objective, but remittances to the county clerk will increase the administrative workload for the Clerk of Court. A monthly remittance schedule is already in effect for certain payees receiving funds through the court ordered payment system, so it would be easier for the department to disburse this fee to the clerk of court as part of a monthly cycle than to create a special quarterly cycle.

Remitting the funds collected once each month lowers the administrative workload for the clerk of court without accumulating funds in the department's COPS bank account for an extended period.

Section 2 also requires the department to maintain records of the amounts of fees assessed, the amounts collected from offenders, the amounts the department deducts as administrative costs, and the amounts remitted to the clerk of court and to report that information to the county's board of county commissioners annually. This information is retained in OBIS, but programming will be required to extract the data and generate a report.

The department recommends that the language of the bill be changed to require the department to maintain a record of amounts paid by each offender and the costs of administration

incurred by the department, and to report the total collected and provide an accounting of the department's cost of administration to the clerk of court. The department also recommends that the language of the bill is revised to require the clerk of court maintain an accounting of the fees assessed, the total amount the department remits to the clerk of court and the clerk's cost of administration; and to prepare a report combining this information into an annual report to the county's board of county commissioners.

The rationale for this recommendation is that the clerk will have the information on assessments from the sentencing orders, will have the information on the amounts the department remits, and will provide an annual audit, so there is no need for the department to be involved in preparing a report unique to the board of county commissioners.

Section 3 of the bill provides specific duties for the clerk of court relating to the accounting for the funds remitted by DC and requires the clerk to prepare an annual audit of the funds and report to the board of county commissioners.

Section 4 specifies that the total amount assessed as costs of administration by DC cannot exceed 3% of the total revenue generated and such amounts deducted cannot exceed the actual costs that are "solely and directly attributable to the fee". The same conditions are applied to any costs of administration assessed by the clerk of court.

Since the bill limits the department's cost of administration to 3 percent of the amount collected, the bill appears to conflict with s. 945.31, F. S., which authorizes the department to assess a 4% administrative fee on all collections. Further, the requirement that the cost of administration be directly attributed to the collection and disbursement of the fee conflicts with s. 945.31, F.S., which does not require an accounting for the actual collection costs.

Since the new fee would be an integrated part of collecting payments to apply against all of the offender's obligations, determining the actual cost of collecting this one fee is not feasible. The overall costs incurred by the department to operate the court ordered payment system cannot be attributed to the individual obligations being collected.

It is not appropriate to collect a 4 percent administrative fee on a majority of the offender's obligations (including victim restitution and court costs), and collect a 3 percent administrative fee on the amounts collected pursuant to this bill. In effect, assessing a lower fee for certain obligations means that the payees who are the beneficiaries of obligations assessed a 4 percent fee are subsidizing the beneficiaries of obligations assessed a 3 percent fee and carrying more than a fair share of the overhead costs associated with the collection effort.

The department recommends that the words "by the department and" in line 39 on page 2 of the bill be deleted. This change would remove any reference to the costs of administration for the department in the bill, but would not affect the assessment of an administrative fee by the county clerk of court.

There is a potential concern that passage of this bill by the legislature could result in the introduction and passage of similar bills to benefit other counties for this or for other specific purposes. If this occurs, the department must attempt to standardize the requirements for each new fee to simplify the administrative workload for the department. Also, as more fees are assessed against offenders, the possibility of offenders absconding to avoid making payments and the possibility that offenders will violate the terms of supervision increases. Increases in the number of violations will add to the workload of all law enforcement agencies.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.