



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility—The bill increases the sanction for violating s. 403.413(6)(a) F.S., littering an amount no greater than 15 pounds or 27 cubic feet in volume, from \$50 to \$200.

#### B. EFFECT OF PROPOSED CHANGES:

Current law prohibits dumping litter on public property, waterways, or private domain unless the litterer has obtained prior consent of the owner of the property and the litter will not cause a public nuisance or violate another state or local law.<sup>1</sup> Any person who litters in violation of s. 403.413(4) F.S. is guilty of a noncriminal offense if the amount of the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.<sup>2</sup> Currently the sanction for violating this law is a \$50 fine, and at the courts discretion the offender may be required to pick up litter or perform other similar labor.<sup>3</sup>

A noncriminal offense is one in which the offender may not be sentenced to a term of imprisonment or any other punishment more severe than a fine, forfeiture, or other civil penalty.<sup>4</sup> A civil penalty differs from a criminal penalty in its goals; civil penalties are awarded to compensate the government for a loss, whereas the goal of a criminal penalty is punishment.<sup>5</sup> However, a civil penalty charge does not afford defendants the constitutional protections that are given to criminal defendants.<sup>6</sup>

This bill proposes to increase the sanction for violating s. 403.413(6)(a) F.S., from \$50 to \$100. The bill also provides that \$50 of this amount shall be deposited into the Solid Waste Management Trust Fund<sup>7</sup> to be used for the solid waste management grant program pursuant to s. 403.7095. This trust fund and grant program is within the Department of Environmental Protection

#### C. SECTION DIRECTORY:

Section 1. Amends s. 403.413(6)(a) F.S., increasing the civil penalty sanction from \$50 to \$100.

Section 2. This act shall take effect July 1, 2005.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See Fiscal Comments, below.

##### 2. Expenditures:

None

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>1</sup> s. 403.413(4) F.S.

<sup>2</sup> s. 403.413(6)(a) F.S.; *For criminal penalties applied to dumping larger quantities of litter see s. 403.413(6)(b)&(c) F.S.*

<sup>3</sup> *Id.*

<sup>4</sup> 15 Fla.Jur 2d 2120 (2004)

<sup>5</sup> 39 Fla. Jur 2d 4 (2004)

<sup>6</sup> 36 Am.Jur 2d 54 (2004), *citing US v. Le Beouf Bros. Towing Co., Inc., 537 F2d 149 (5th Cir. 1976).*

<sup>7</sup> See s. 403.709, F.S.

1. Revenues:  
See Fiscal Comments, below.

2. Expenditures:  
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments, below.

D. FISCAL COMMENTS:

Currently the fine for violating s. 403.413(6)(a) F.S. is \$50. Anecdotally, the Florida Fish and Wildlife Commission issued 60 citations for littering in the last calendar year, and has issued 3 such citations this year.<sup>8</sup>

The cost of litter pickup is distributed widely throughout the divisions of the state; city, county, and state agencies each contribute. For instance, the Florida Department of Transportation estimates that it spends \$10 million annually in litter removal, and a medium sized county should expect to pay roughly \$115,000 a year.<sup>9</sup> In so far as the proposed legislation reduces littering, each entity engaged in trash clean up may be able to reduce its spending for that activity.

The bill requires that \$50 of the littering fine collected must be deposited in the Solid Waste Management Trust Fund to be used for the solid waste management grant program.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. This bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, reduce the authority that cities or counties have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with cities or counties

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Additional Agency rules do not appear necessary to implement this proposed legislation,

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

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

The Justice Council adopted an amendment which reduced the applicable fine to \$100 and provided that \$50 of this must be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095.

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<sup>8</sup> As reported on February 28, 2005

<sup>9</sup> An estimated expense provided for by the Florida Association of Counties based on the annual expenses of Leon County