

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1509 Community Service for Infractions of Noncriminal Traffic Offenses

**SPONSOR(S):** Economic Expansion & Infrastructure Council, Braynon, others

**TIED BILLS:** **IDEN./SIM. BILLS:** HB 597, SB 858

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>10 Y, 0 N</u>	<u>Brown</u>	<u>Miller</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Brown/Madsen</u>	<u>Tinker</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u>Martin</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

CS/HB 1509 modifies provisions allowing a person ordered to pay a civil penalty for a noncriminal traffic infraction to perform community service in lieu of paying, if the person presents evidence of a “demonstrable financial hardship.” Upon a finding of such hardship, the court must allow the person to satisfy the civil penalty by participating in community service in lieu of payment.

The bill specifies that either the federal minimum wage or the “prevailing wage rate” for a specified “trade or profession” may be used to determine a specific value for the community service, and provides a reporting mechanism between the agency overseeing the community service and the clerk of court authorized to collect payment from the offender. The bill also defines “community service” and “community service agency.”

CS/HB 1509 states that notwithstanding any other provision of law, a person’s driver’s license cannot be suspended for failure to pay the civil penalty without a finding that person has the ability to pay.

The bill is effective July 1, 2008.

The bill may have a negative but indeterminate effect on the revenues of the various state and local entities and programs that receive portions of the revenue from civil penalties. It is unclear how many potential hardship cases might request a “conversion” of their civil penalty into community service hours. As a result, the decrease in the amount of revenue collected from civil penalties, and any additional costs to clerks of court to implement and verify the accurate tracking of legitimate community service hours, etc.) are difficult to estimate.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility** – The bill prevents the suspension of a driver's license for a person unable to pay a civil penalty, if the person proves an inability to pay such penalty; the person may perform community service at the discretion of the court.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### *Traffic Infraction Penalties*

Section 318.18, F.S., provides penalties for non-criminal traffic infractions, which typically must be paid within 30 days.<sup>1</sup> The penalties include:

- A \$15 fine for pedestrian infractions, bicycle infractions, and certain other infractions involving persons under 14;<sup>2</sup>
- A \$30 fine all non-moving violations; failure to update a driver's license address, certificate of title, or vehicle registration; and expiration of a driver's license;<sup>3</sup>
- Speeding fines ranging from \$25 - \$250, depending on the rate of excess speed, and including additional fines for exceeding the speed limit in a school zone, construction zone, or other special circumstance;<sup>4</sup>
- A \$100 fine for failing to stop for a school bus,<sup>5</sup> or \$200 for passing a school bus on the side from which children enter and exit, if the bus displays a stop signal;<sup>6</sup>
- A \$100 fine for illegally parking in a handicap space;<sup>7</sup>
- A \$100 fine for each failure to pay a toll when required;<sup>8</sup>
- A \$100 fine for failing to obey railroad crossing signals;<sup>9</sup>
- A \$25 fine for unlawfully operating an all-terrain vehicle under s. 316.2074, F.S.;<sup>10</sup>
- A \$200 fine for overloading a vehicle or improperly securing a vehicle's load;<sup>11</sup>
- A \$125 fine for failure to obey traffic signals generally, and red lights specifically;<sup>12</sup> and
- A \$60 fine for any moving violation that is not otherwise specified and does not trigger a mandatory hearing.<sup>13</sup>

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<sup>1</sup> Section 318.14(4), F.S.

<sup>2</sup> Section 318.18(1)(a) – (c), F.S.

<sup>3</sup> Section 318.18(2), F.S.

<sup>4</sup> Section 318.18(3), F.S. Additional special circumstances are provided in s. 318.18(3)(c) – (h), F.S.

<sup>5</sup> Section 318.18(5)(a), F.S.

<sup>6</sup> Section 318.18(5)(b), F.S.

<sup>7</sup> Section 318.18(6), F.S.

<sup>8</sup> Section 318.18(7), F.S.

<sup>9</sup> Section 318.18(9), F.S.

<sup>10</sup> Section 318.18(10), F.S.

<sup>11</sup> Section 318.18(12), F.S.

<sup>12</sup> Section 318.18(15), F.S.

<sup>13</sup> Section 318.18(3)(a), F.S.

This section also contains additional costs to be added to the fines above. Clerks of court are authorized to collect:

- An additional \$2.50 for every infraction, “to help pay for criminal justice education and training programs pursuant to s. 938.15, F.S.”<sup>14</sup>
- An additional \$3 for every infraction towards the Court Cost Clearing Trust Fund created by s. 928.01, F.S. and an additional \$2 for every infraction to assist with criminal justice education for local government, pursuant to s. 938.15, F.S., when the penalty is assessed by a municipality or county;<sup>15</sup>
- An additional \$3 for each pedestrian infraction, \$16 for nonmoving traffic infractions, and \$30 for moving traffic infractions, to be paid into the fine and forfeiture fund established pursuant to s. 142.01, F.S.<sup>16</sup>
- In Brevard, Bay, Alachua, and Pinellas counties, an additional \$3 for every infraction to support their criminal justice selection centers or criminal justice access and assessment centers.<sup>17</sup>

In addition, many boards of county commissioners and other local governments are authorized to impose a surcharge of up to \$15 for any infraction or violation to fund state court facilities.<sup>18</sup> Boards of county commissioners may also require by ordinance a \$5 fine with any civil traffic penalty, to fund driver education programs.<sup>19</sup>

### *Failure to Pay Penalties*

Section 318.18(8)(a), F.S., provides that any person who fails to comply with the court’s requirements or who fails to pay civil penalties must pay an additional penalty of \$12, \$2.50 of which must be deposited in the General Revenue Fund, and \$9.50 of which must be deposited in the Highway Safety Operating Trust Fund.

If a person persists in failing to pay a civil penalty, the person’s driver’s license is eventually suspended pursuant to s. 318.15, F.S. The clerk of court is directed to notify the Department of Highway Safety and Motor Vehicles, Division of Driver’s Licenses within 10 days of the person’s failure to pay. Upon receipt, the Department immediately issues a suspension effective 20 days after mailing to the person. The person’s privilege to drive is not restored until the person complies with the provisions of s. 318.18, F.S., and pays a service charge of \$47.50 to the clerk, thereby clearing the suspension.<sup>20</sup>

### *Financial Hardship*

Section 318.18(8)(b), F.S., provides that any person who fails to comply with the court’s requirements “due to demonstrable financial hardship shall be authorized to satisfy such civil penalties by public works or community service.”

The community service is presumed to be valued “at the rate of the minimum wage,” and credited toward payment of the person’s civil penalties. However, if the person has a “trade or profession for which there is a community service need and application,” the person may be credited not at the minimum wage, but at the “average standard wage for such trade or profession.”

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<sup>14</sup> Section 318.18(11)(c), F.S.

<sup>15</sup> Section 318.18(11)(d), F.S.

<sup>16</sup> Section 318.18(11)(a), F.S.

<sup>17</sup> Section 318.18(11)(b), F.S.

<sup>18</sup> See Section 318.18(13)(a) and 318.18(14), F.S.

<sup>19</sup> Section 318.1215, F.S.

<sup>20</sup> Section 318.15(2), F.S. The person must otherwise be in compliance with Chapter 322, F.S., regarding driver’s licenses.

Even if a person does not demonstrate financial hardship, the person “may also, at the discretion of the court, be authorized to satisfy such civil penalties by public works or community service in the same manner.”

By way of comparison, pursuant to s. 938.30, F.S., a statute regarding criminal penalties, a court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay. However, this criminal statute also allows for judicial liens on non-exempt property (forfeiture), payment plans, and other judicial remedies to make victims whole, and allows the court to charge the convicted person with associated costs related to these collection actions.

### *Community Service “Valuation”*

Community service is valued in various ways in different sections of the Florida Statutes. For example, s. 316.193, F.S., regarding driving under the influence, states that a first conviction penalty must include at least 50 hours of community service; however, these hours may be “bought out” at a rate of \$10 per hour, if the judge makes certain determinations. Section 569.11, F.S., regarding underage possession of tobacco products or attempts to purchase tobacco products, states that violations are punishable by 16 hours of community service, or a \$25 fine – a conversation rate of just over \$1.56 per hour. Under s. 806.13, F.S., a minor violating certain prohibitions against graffiti may have his or her driver's license suspended, but in hardship cases may “buy back” his or her license at the rate of one hour of community service per day of driving privileges.<sup>21</sup>

### Proposed Changes

CS/HB 1509 amends section 318.18(8)(b), F.S., to clarify the situations in which a person ordered to pay a civil penalty for a noncriminal traffic infraction may present evidence of a “demonstrable financial hardship.” Upon a finding of such hardship, the court “shall allow the person to satisfy the civil penalty by participating in community service...” The bill also expands on the procedures to be used in identifying and valuing community service activities.

The bill defines “community service” as “uncompensated labor for a community service agency,” and defines a “community service agency” as a:

- not-for-profit corporation,
- community organization,
- charitable organization,
- public officer,
- the state or any political subdivision of the state, or
- any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

CS/HB 1509 values community service at the “specified hourly credit rate per hour.” This phrase is defined as either:

- “The wage rate specified in 29 U.S.C. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that is then in effect and that an employer subject to that provision must pay per hour to each employee who is subject to that provision,” [*i.e.*, the federal minimum wage], or

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<sup>21</sup> In other words, a minor whose license is suspended for 120 days for a graffiti violation, who is able to show a hardship reason to keep the license, may perform 120 hours of community service in lieu of the 120 days' license suspension. The statute expresses a preference that the community service be at least 100 hours, and be directly related to cleaning graffiti from public areas.

- If the person has a trade or profession for which there is a need from a community service agency, the “prevailing wage rate” for such trade or profession (in lieu of the current statute’s “average standard wage.”)

The community service performed under the bill must be reported by the community service agency to the clerk of court in a report on official letterhead, bearing the signature of the person designated to represent the community service agency. When the value of the community service reaches the amount of the fine, the clerk shall so certify to the court, and the clerk shall report the fine as paid.

Notwithstanding any other provision of law, the bill prevents a person’s license from being suspended for failure to pay a civil penalty without a finding that person has the ability to pay.

C. SECTION DIRECTORY:

**Section 1.** Amending s. 318.18, F.S., revising procedures allowing a person to satisfy a civil penalty for certain infractions by participating in community service if the person demonstrates a financial hardship; providing certain wage rates regarding the service performed; providing responsibilities for community service agencies; defining the terms "community service" and "community service agency."

**Section 2.** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS, below.

2. Expenditures:

See FISCAL COMMENTS, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS, below.

2. Expenditures:

See FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on indigent drivers who commit traffic violations.

D. FISCAL COMMENTS:

The bill may have an indeterminate effect on the revenues and expenditures of state and local court systems. It is unclear how many potential hardship cases might request a “conversion” of their civil penalty into community service hours. As a result, the secondary impacts (e.g. the decrease in the

amount of revenue collected from civil penalties, additional costs to clerks of court to implement and verify the accurate tracking of legitimate community service hours, etc.) are similarly difficult to estimate.

Community Service Agencies, as defined by the bill, could benefit from additional “free” labor to the extent that judges authorize community service hours in lieu of payment of civil penalties.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action 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:

None.

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

None.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Infrastructure reported the bill favorably with one amendment. The amendment removes that portion of the bill allowing a judge to order community service in lieu of a fine, if the offender has *not* presented proof of a financial hardship.

On April 18, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably as a Council Substitute, with a strike-all amendment. The strike-all amendment moved the substance of the bill into s. 318.18(8)(b), F.S. and removed the current language in that subsection, thereby reducing the duplicative language created by the original bill. The strike-all amendment also removed a provision from the original bill that stated that a person ordered to pay a civil penalty for a non-criminal traffic infraction cannot be imprisoned for failing to pay such penalty if the person is unable to pay.

This analysis is drawn to the Council Substitute.