

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 165

Penalties for Driving Under the Influence

SPONSOR(S): Nehr

TIED BILLS:

IDEN./SIM. BILLS: SB 470

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	9 Y, 0 N, As CS	Padgett	Kramer
2)	Roads, Bridges & Ports Policy Committee		Brown	Miller
3)	Criminal & Civil Justice Policy Council			
4)	Criminal & Civil Justice Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

Currently, a mandatory condition of probation for a first conviction for driving under the influence requires that the defendant perform 50 hours of community service. If the court determines that it is in the best interests of the state, in lieu of the 50 hours of community service, the defendant may pay a fine of \$10 per hour for each hour of community service ordered by the court. The \$10 fine is directed to the organization that would have benefited from the community service hours.

CS/HB 165 amends s. 316.193(6), F.S. to raise the amount of the fine a defendant can elect to pay in lieu of community service from \$10 per hour to \$50 per hour. The bill provides that the revenue generated from the increased fine would be divided as follows:

- \$30 to the State Courts Revenue Trust Fund
- \$5 to the State Attorneys Revenue Trust Fund
- \$5 to the Public Defenders Revenue Trust Fund
- \$10 to the organization that would have benefited from the community service hours

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, s. 316.193, F.S. provides that a person commits the offense of driving under the influence (DUI) if the person is driving or in actual physical control of a motor vehicle and:

- is under the influence of alcoholic beverages, chemical substances, or controlled substances to the extent that the person's normal faculties are impaired; or
- the person has a blood alcohol level of .08 or more grams of alcohol per 100 milliliters of blood; or
- the person has a breath-alcohol level of .08 or more grams of alcohol per 210 liters of breath.¹

The mandatory penalties for a first time DUI conviction include:

- a maximum of one year probation
- a fine of not less than \$500 and not more than \$1,000
- imprisonment for not more than 6 months
- completion of a DUI substance abuse program
- community service of a minimum 50 hours
- 10 day impoundment of the defendant's vehicle²

In lieu of 50 hours of community service, the court may order the defendant to pay \$10 per each hour of each hour of community service required.³ To convert the community service requirement to a fine, the court must consider whether payment of a monetary fine is in the best interests of the state.⁴ In making this determination, the only factor explicitly listed that the court may consider is the residence or location of the defendant during the probationary period.⁵ The \$10 fine is directed to the organization that would have benefited from the community service.

¹ S. 316.193(1)(a), F.S.

² S. 316.193(1) – (6), F.S. The penalties for second or subsequent DUI convictions increase to varying degrees, however only a first DUI conviction requires community service as a mandatory condition of probation.

³ S. 316.193(6)(a), F.S.

⁴ Id.

⁵ Id. (i.e. defendant lives out of state)

Proposed Changes

CS/HB 165 amends s. 316.193(6), F.S. to raise the amount of the fine a defendant can elect to pay in lieu of community service from \$10/hour to \$50/hour. Revenue generated by the increased fine is distributed as follows:

- \$30 to the State Courts Revenue Trust Fund
- \$5 to the State Attorneys Revenue Trust Fund
- \$5 to the Public Defenders Revenue Trust Fund
- \$10 to the organization that would have benefited from the community service hours

B. SECTION DIRECTORY:

Section 1 Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 2 Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The increase in the amount of the fine could result in an increase in revenue to the State Courts Revenue Trust Fund, the State Attorneys Revenue Trust Fund, and the Public Defenders Revenue Trust Fund. Alternatively, increasing the 'buyout' could lessen the likelihood that offenders would pay, thereby decreasing fiscal revenue. The state could still benefit from this arrangement, though indirectly, from the additional community service hours performed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HB 165 amended s. 316.193, F.S., to provide that a judge may only allow a defendant to pay a monetary fine in lieu of performing community service if the defendant would face an “undue hardship” by performing the community service.

On February 4, 2009, the Public Safety & Domestic Security Policy Committee made amendments to the bill. CS/HB 165 raises the hourly amount of the fine a defendant can elect to pay in lieu of performing community service from \$10/hour to \$50/hour, and provides distribution details for the additional revenue collected.