

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5107A PCB CCJ 09A-01 State Judicial System

**SPONSOR(S):** Criminal & Civil Justice Appropriations Committee; Adams

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Criminal & Civil Justice Appropriations Comm.: Committee	6 Y, 0 N	Darity	Davis
1) Full Appropriations Council on General Government & Health Care		Darity	Leznoff
2)			
3)			
4)			
5)			

**SUMMARY ANALYSIS**

This bill will offset general revenue reductions proposed in the Special Appropriations Act, by providing additional revenue sources to the state courts, state attorneys and public defenders. Specifically, the bill would increase specific fees and fines and would generate approximately \$15.9 million in FY 2008-2009.

Currently, if a person who has committed a traffic infraction successfully completes a basic driver improvement course, they receive an 18 percent reduction in the civil penalty imposed. The bill removes the 18 percent reduction so that a person who completes a basic driver improvement course will be required to pay the same civil penalty as if he or she did not take the course. The 18% of the civil penalty imposed will be payable to the operating trust fund for the state courts system.

The bill increases the penalty imposed for certain speeding violations. A \$25.00 increase is placed on the existing penalty for exceeding the speed limit between the ranges of 15-19 mph, and 20-29 mph. The penalties would go to \$150 and \$175, respectively. The increased revenues are payable to the operating trust fund for the state courts system.

The bill also adds a \$10 assessment to all noncriminal moving offenses and nonmoving traffic violations. The increased revenues from the assessment are payable to the following funds:

- \$5.00 payable to the operating trust fund for the state courts system.
- \$3.33 payable to the grants and donations trust fund for the state attorneys.
- \$1.67 payable to the grants and donations trust fund for the public defenders.

The bill provides that the term “convicted” or “conviction” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Currently, the section provide that the fines imposed must be deposited by the clerk of the court in the fine and forfeiture fund. The bill provides that fines imposed when adjudication is withheld must be deposited in the Operating Trust Fund within the state court system.

The bill further provides that in the court’s discretion, in addition to court costs and fees, a fine authorized by law may be imposed upon an offender who has been determined guilty of a non-felony offense as a result of trial or the entry of a plea of guilty or nolo contendere regardless of whether the offender is adjudicated guilty or first placed on probation.

The Office of Economic and Demographic Research found that the provisions of this bill will generate approximately \$15.9 million in FY 2008-2009 and \$63.2 million each subsequent year.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h5107A.CGHC.doc

**DATE:** 1/6/2009

## 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:

##### Optional Penalty Reduction for Certain Noncriminal Traffic Infractions.

In general, a driver who commits a traffic infraction is required to pay a civil penalty related to the infraction.<sup>1</sup> Moving violations also result in points being assessed against the driver's license; a driver that accumulates enough points has his or her license automatically suspended for a period of time.<sup>2</sup> Section 318.14(9), F.S., provides that, for most noncriminal infractions, a driver may elect to attend a basic driver improvement course.<sup>3</sup> A driver that makes the election and timely completes the course receives two benefits -- an 18% reduction in the civil penalty imposed under s. 318.18(3), F.S.,<sup>4</sup> and no points are assessed against the driver's license. The driver bears the cost of attending the course<sup>5</sup> and is assessed a \$6 fee for the election.

This bill amends s. 318.14(9), F.S., to remove the 18% discount for persons who elect to attend a basic driver improvement course. The driver still receives the benefit of no points being assessed against his or her license. The 18% of the civil penalty imposed under s. 318.18(3), F.S., is payable to the operating trust fund for the state courts system.

Civil penalties assessed due to traffic infractions are collected by the clerk of circuit court. The clerk's budgeting procedures are set forth in ss. 28.35 and 28.36, F.S. Most of the monies collected from infractions are distributed to various funds,<sup>6</sup> the remainder is maintained by the clerks as revenue. A clerk of the circuit court is elected in each of the counties. The offices of the clerks are funded through revenues collected by the clerks. A clerk whose revenues exceed the clerk's authorized budget must

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<sup>1</sup> See s. 318.18, F.S.

<sup>2</sup> See generally s. 322.27(3), F.S.

<sup>3</sup> The option is not available to a driver holding a commercial driver's license, to a driver who was driving more 30 m.p.h. or more over the limit, or to an offense where there is a mandatory hearing under s. 318.19, F.S. (which includes crashes involving serious injury or death, passing a stopped school bus, or failure to secure load).

<sup>4</sup> The civil penalty for a moving violation other than speeding is \$60 (\$10.80 discount). Speeding penalties are \$25 for 6-9 m.p.h. over the limit (\$4.50 discount), \$100 for 10-14 m.p.h. over the limit (\$18 discount), \$125 for 15-19 m.p.h. over the limit (\$22.50 discount), \$150 for 20-29 m.p.h. over the limit (\$27 discount), and \$250 if more than 30 m.p.h. over the limit (no discount as the option is not available for speeding at this level). There are enhanced speeding penalties related to school zones, posted construction zones, enhanced penalty zones, if a pedestrian is injured, toll facilities, and multiple offenses of 30 m.p.h. over the limit.

<sup>5</sup> A quick internet search showed course costs ranging from \$11.95 to \$14.95.

<sup>6</sup> The distribution varies based upon the offense. A full explanation of the distribution of revenues from traffic offenses is published by the Florida Association of Court Clerks, it runs 21 pages.

remit those excess revenues to a statewide fund that funds clerks whose expenses exceed revenues. Statewide, total excess revenues of the clerks historically have exceeded total authorized budgets, which excess is paid to the state and deposited into the General Revenue Fund.

The budget process for the clerks provides that, where a clerk shows increased revenues over the previous year, the increase may justify an increase in the clerk's base budget.<sup>7</sup> This bill provides that the additional revenues collected by clerks as a result of eliminating the 18% discount may not be used by a clerk to seek an increase in the clerk's base budget. See Fiscal Notes for an estimate of the revenues that this section of the bill may generate.

### Monetary Penalty for Speeding

Section 318.18, F.S., sets the base monetary penalties for noncriminal traffic infractions. Paragraph (3)(b) sets the penalty for speeding offenses at the following amounts<sup>8</sup>:

<u>For speed exceeding the limit by:</u>	<u>Penalty:</u>
1-5 m.p.h	Warning (no penalty)
6-9 m.p.h	\$25
10-14 m.p.h	\$100
15-19 m.p.h	\$125
20-29 m.p.h	\$150
30 m.p.h. and above	\$250

In calendar year 2007, state and local law enforcement agencies issued 1,341,657 citations for unlawful speeding.<sup>9</sup>

This bill amends s. 318.18(3)(b), F.S., to increase the penalties for the categories of 15-19 m.p.h. and 20-29 m.p.h. by \$25 each. This bill also creates a new subsection (20) in s. 318.21, F.S., to provide that the increased revenues are payable to the operating trust fund for the state courts system, and to provide that the additional revenues from the \$25 penalty increase may not be used by the clerk of the circuit court to seek an increase in the clerk's base budget. See Fiscal Notes for an estimate of the revenues that this section of the bill may generate.

### Additional Assessment for Traffic Violations

In general, a driver who commits a traffic infraction is required to pay a civil penalty related to the infraction. In addition to the base penalty, the driver is also required to pay court costs and other assessments that vary based on the offense. In calendar year 2007, state and local law enforcement agencies issued 4,656,520 citations for noncriminal moving offenses and nonmoving traffic violations.<sup>10</sup>

This bill adds subsection (19) to s. 318.18, F.S., to add a \$10 assessment to all noncriminal moving offenses and nonmoving traffic violations. The increased revenues from the assessment are payable to the following funds:

- \$5.00 payable to the operating trust fund for the state courts system.
- \$3.33 payable to the grants and donations trust fund for the state attorneys.
- \$1.67 payable to the grants and donations trust fund for the public defenders.

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<sup>7</sup> See s. 28.36, F.S.

<sup>8</sup> These penalty levels were set in 1996, ch. 96-350, L.O.F., although the warning at 1-5 m.p.h. was added later. An inflationary adjustment from 1996 to 2008 would be: \$25 to \$34.43, \$100 to \$137.73, \$125 to \$172.16, \$150 to \$206.60, and \$250 to \$344.33. Calculation courtesy of <http://www.aier.org/research/worksheets-and-tools/cost-of-living-calculator>.

<sup>9</sup> 2007 Florida Uniform Traffic Citation Statistics, accessed at: <http://www.flhsmv.gov/reports/2007UTCStats/UTCStats.html>.

<sup>10</sup> Non-criminal moving infractions totaled 3,036,447 and non-moving infractions totaled 1,620,073. Data from the 2007 Florida Uniform Traffic Citation Statistics, accessed at: <http://www.flhsmv.gov/reports/2007UTCStats/UTCStats.html>.

The additional revenues from the assessment may not be used by the clerk of the circuit court to seek an increase in the clerk's base budget. See Fiscal Notes for an estimate of the revenues that this section of the bill may generate.

### Fines for Criminal and Noncriminal Convictions

Section 775.083, F.S., provides that a person who has been convicted of a criminal or noncriminal offense may be sentenced to pay a fine. The section sets out the maximum fines that can be imposed as follows:

1. \$ 15,000 when the conviction is for a life felony;
2. \$10,000 when the conviction is for a first or second degree felony;
3. \$5,000 when conviction is for a third degree felony;
4. \$1,000 when the conviction is for a first degree misdemeanor;
5. \$500 when the conviction is for a second degree misdemeanor or a noncriminal violation;
6. Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim; or
7. Any higher amount specifically authorized by statute.<sup>11</sup>

Currently, the section does not contain a definition of the term "conviction" or "convicted". At issue is whether these terms would include cases in which adjudication of guilt is withheld.<sup>12</sup> The bill provides that the term "convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

Currently, the section provides that the fines imposed must be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01, F.S. Section 142.01, F.S., provides that the clerk of the circuit court in each county of this state must establish a fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions.

The bill provides that fines imposed when adjudication is withheld must be deposited in the Operating Trust Fund within the state court system and shall not be used in establishing the budget of the clerk of the court under ss. 28.36 or 28.35, F.S.

### Probation

Section 948.01, F.S., relates to when a court may place a defendant on probation or into community control. The section provides that if a court determines that a defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold adjudication of guilt and in either case, shall stay and withhold the imposition of sentence and place the defendant on probation.

In *State v. Tribble*, 984 So.2d 639 (Fla. 4<sup>th</sup> DCA 2008), the state appealed the trial court's imposition of a withhold of adjudication and court costs after the defendant pled guilty to a felony charge. The Fourth District Court of Appeal affirmed earlier caselaw in holding that "[w]ithholding or suspending adjudication or sentence in a felony case can only be done when the defendant is put on probation."

The bill amends s. 948.01, F.S., language to provide that, in the circumstances described above, if a defendant is determined guilty of a felony as the result of trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, the court must place the defendant on probation. If the defendant is determined guilty of a non-felony offense as the result of trial or the entry

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<sup>11</sup> For example, the drug trafficking statute, s. 893.135, F.S. sets forth mandatory fines which must be imposed based on the quantity of controlled substance involved.

<sup>12</sup> See e.g., *State v. T.T.*, 773 So.2d 586 (Fla. 1<sup>st</sup> DCA 2000) (holding that prior withheld delinquency adjudications for theft did not constitute the prior convictions necessary to support a charge of felony theft in absence of express statutory language or statutory framework); *Raulerson v. State*, 763 So.2d 285, 290 (Fla.2000) (holding that the term "conviction" as used in section 322.34(1), F.S., includes both adjudications and withheld adjudications)..

of a guilty or nolo contendere plea, regardless of whether adjudication is withheld, the court may place the defendant upon probation. The bill further provides that in the court's discretion, in addition to court costs and fees, a fine authorized by law may be imposed upon a non-felony offender who has neither been adjudged guilty nor first placed on probation.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 318.14, F.S., relating to noncriminal traffic infractions.

Section 2. Amends s. 318.15, F.S., relating to noncriminal traffic infractions.

Section 3. Amends s. 318.18, F.S., relating to amount of penalties.

Section 4. Amends s. 318.21, F.S., relating to disposition of civil penalties by county courts.

Section 5. Amends s. 775.083, F.S., relating to fines.

Section 6. Amends s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 7. Provides effective date of February 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

The following revenues were projected by the Office of Economic and Demographic Research:

<b>Issue</b>	<b>Estimated Revenue 2008-2009 (3 Mos.)</b>	<b>Estimated Revenue 2009-2010 (12 Mos.)</b>
\$10 assessment to all Civil Traffic Infraction Citations	7,716,852	30,867,408
Proportional fine increase to select Civil Traffic Infractions (Speeding). A \$25 fine will be charged for non-criminal moving infractions when driving 15-19 mph (currently \$125) and 20-29 mph (currently \$150) over the posted speed limit.	3,206,573	12,826,291
Allow the court to impose a fine when adjudication of guilt is withheld in misdemeanor and felony cases. (Intent is to clarify statute)	2,181,512	8,726,050
Eliminate the option offering a person an 18% percent fine reduction for electing to attend driver improvement schools.	2,707,340	10,829,358
<b>Total Estimated Revenue</b>	<b>15,812,277</b>	<b>63,249,107</b>

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector will pay increased fees for all speeding, noncriminal moving and non-moving traffic violations, and additional court costs.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**