

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 3, 1998 Revised: 03/04/98 \_\_\_\_\_

Subject: County Court Assessments

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u>Nebelsiek</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes a county to assign the collection of past due fines and court costs to a private attorney or collection agency. The county is authorized to add a fee to the past due balance to offset collection costs.

This bill substantially amends section 34.191 of the Florida Statutes.

II. Present Situation:

Section 34.191, F.S., provides that all fines and forfeitures arising from offenses tried in county court must be collected and accounted for by the clerk of court. Fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipality must be paid monthly to the county or municipality, as appropriate, except as provided in s. 318.21 or s. 943.25, F.S.

In 1991, the Auditor General issued a report estimating that 95 percent of fines and fees assessed by circuit courts in nine counties in FY 1988-89 remained uncollected. The collection rates for fines and fees assessed by county and traffic courts over the same period were higher—an estimated 74 percent and 79 percent, respectively. Summary information on the amount of fines and fees assessed and collected statewide was not available, as the Clerks of the Court are not required by law to gather and report this information.

Collection of unpaid fines and forfeitures levied in county and circuit courts is problematic. The Clerks of Court, probation organizations, and the Department of Corrections are required to initiate certain actions to recover uncollected fines and fees. The 1991 Auditor General report identified various collection actions undertaken by these entities. In the nine county group

profiled in the report, initiation of collection action was taken on 67 percent of these cases, and resulted in collecting 43 percent of the assessed fines and fees.

Some county commissions use in-house resources or contract with private collection agencies to pursue fines and forfeitures imposed by county courts. However, it appears that there is little incentive for a county commission to pursue these unpaid debts because collection service charges may approximate the counties' portion of fine and forfeiture revenue. The statutes specifically state how such revenue is to be distributed and do not allow for a proration of the collection costs between recipients of the fine and forfeiture revenue.

In certain cases, the statutes provide specific authority for state or local governments to contract with collection agencies. Pursuant to s. 938.29, F.S., the board of county commissioners is required to enforce debts or liens imposed by the court against certain defendants in criminal actions who have received services of a public defender or an appointed attorney and who have been assessed attorneys' fees and costs. Under certain situations, the county is authorized to contract with a collection agency for collection of such debts or liens. The collection fee is deducted from the collected debt.

Pursuant to s. 17.20, F.S., the Department of Banking and Finance is authorized to use a collection agency to pursue claims for state attorneys. The Department is authorized to pay for collection services by authorizing either the agency to deduct the fee from the amount collected, to bill the state, county, or special district for the collection, or to add a fee to the amount collected.

Pursuant to parts V and VI of ch. 559, F.S., commercial and consumer collection agencies, respectively, must register with the Department of Banking and Finance. Attorneys who are primarily engaged in the collection of commercial claims must be registered as a commercial collection agent with the department. Collection agencies must maintain a surety bond. The Division of Consumer Services of the department is responsible for registering and investigating consumer complaints, and if warranted, revoking the registration of consumer collection agencies.

On December 31, 1997, there were 60 commercial collection agencies and 692 consumer collection agencies registered with the department.

### **III. Effect of Proposed Changes:**

This bill authorizes a county to assign the collection of past due fines and costs levied in *county court* to a private attorney or collection agency. Fines, court costs, or other cost imposed by the court, may be so assigned if they are 90 days or more past due and if the board of county commissioners determines that assignment is cost-effective and follows established bid practices. The attorney or collection agency must be licensed or registered in the state.

The county may authorize a fee to be added to the past due balance to offset collection costs.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

If the authority is granted to counties to impose a collection fee against county court debts, it can be argued that there may be an *ex post facto* increase in penalty against criminal defendants convicted of crimes before this new fee authority was effective. In response, it can be argued that any collection action is akin to a civil action necessary to recover debt. Initiation of collection activity is contingent upon a new action by the defendant - failure to pay the court imposed debt - and the assessment of a collection fee would not be a part of the sentence.

Prospectively, imposition of such a fee would not be a problem.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

To the extent that attorneys or private collection agencies are successful in collecting past due fines, court costs, and other costs imposed by the county court, county and municipal governments will benefit from this new authority.

**VI. Technical Deficiencies:**

None.

**VIII. Amendments:**

#1 by Community Affairs:

Clarifies that counties may only assign collection of unpaid fines, fees, and other costs to collection agencies who are “registered and in good standing pursuant to Chapter 559.”

#1 by Governmental Reform and Oversight:

Specifies the amount of the fee that may be added to the outstanding balance and limits the amount to not more than 40 percent of the benefit obtained.

#2 by Governmental Reform and Oversight:

Clarifies that collection of fines, forfeitures, and other costs is prospective only.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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