

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Criminal and Civil Justice Appropriations Committee

BILL: CS/CS/SB 2162

INTRODUCER: Judiciary Committee; Community Affairs Committee and Senator Villalobos

SUBJECT: Local Government Funding

DATE: April 20, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
2.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u></u>	<u>Johansen</u>	<u>FT</u>	<b>Withdrawn</b>
4.	<u>Hendon</u>	<u>Sadberry</u>	<u>JA</u>	<b>Favorable</b>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

**I. Summary:**

Existing law authorizes counties meeting certain conditions to impose a surcharge for traffic infractions in order to service bonds issued prior to 2003 for the funding of state-court facilities. This bill authorizes those counties to utilize surcharge revenue exceeding the debt service on those bonds for certain purposes related to court facilities. Based on a certification of need by the chief judge, those counties are also authorized to levy this surcharge concurrently with another traffic-infraction surcharge that other counties may levy to fund state-court facilities.

This bill also authorizes the continued collection of a \$15 surcharge assessed by certain local governments for traffic infractions and violations which is scheduled for repeal on September 30, 2007, and authorizes the assessment of up to \$3 in court costs, to be used to operate and administer Teen Courts, for persons adjudicated delinquent in circuit or county court for committing a delinquent act. The bill also authorizes the assessment of up to \$65 in court costs for persons adjudicated delinquent for a delinquent act under the laws of the state. Finally, the bill authorizes an assessment of up to \$85 in surcharges for persons adjudicated delinquent for a delinquent act under the laws of the state, and authorizes the continued collection of the surcharge which is scheduled for repeal on September 30, 2007.

The bill substantially amends the following section of the Florida Statutes: 318.18, 938.19, and 939.185.

## II. Present Situation:

### Surcharges for Traffic Infractions and Violations, and Criminal Offenses

Section 318.18(13)(b), F.S., authorizes counties that previously used increased court fees and service charges to secure payment for bonds that finance court facilities to impose a surcharge to pay off those existing bonds, and precludes courts from waiving those surcharges.

During the 2005 Regular Session, the Legislature enacted chapter 2005-236, Laws of Florida, to further the implementation of Revision 7 to Article V of the Florida Constitution. Section 318.18(14), F.S., was created to provide that the City of Jacksonville-Duval County and Miami-Dade County are each authorized to impose a surcharge of up to \$15 for certain non-criminal traffic infractions and certain criminal traffic violations.<sup>1</sup> The revenue is to be transferred to the unit of local government for the purpose of replacing revenue from fines being deposited into the fine and forfeiture fund established by each clerk of the circuit court.<sup>2</sup> Under the provisions of s. 318.18, F.S., the authority to impose the surcharge is scheduled for repeal on September 30, 2007.

Section 939.185, F.S., authorizes boards of county commissioners to adopt local ordinances imposing additional court costs, not to exceed \$65, to be imposed on persons who plead guilty or *nolo contendere* (no contest) to, or are found guilty of, any felony, misdemeanor, or criminal traffic offense under the laws of the state. In 2005, the Legislature authorized the City of Jacksonville-Duval County and Miami-Dade County to each enact an ordinance imposing a surcharge of up to \$85 to be imposed in addition to the court costs.<sup>3</sup> The authority to impose the \$85 surcharge is scheduled for repeal on September 30, 2007.

### Teen Courts

Teen Court is a first-time offenders program for juveniles between the ages of 10 and 17. Juvenile violators must stand before a jury of their peers, plead guilty, and accept whatever sanctions their peers impose. Teens between the ages of 13 and 17 act as the defense attorney,

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<sup>1</sup> The language from s. 318.18(14), F.S., “any unit of local government that is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, and that is granted the authority in the State Constitution to exercise all the powers of a municipal corporation, and any unit of local government operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the State Constitution of 1968, that is granted the authority in the State Constitution to exercise all the powers conferred now or hereafter by general law upon municipalities” refers to the City of Jacksonville-Duval County and Miami-Dade County as their charters were created under the Constitution of 1885. It also refers to the authority for Monroe and Hillsborough Counties to create charters under the Constitution of 1885. Monroe and Hillsborough counties have not created charters under the Constitution of 1885; however, Hillsborough is now a charter county under the statutory mechanism of ch. 125, F.S.

<sup>2</sup> Prior to July 1, 2004, pursuant to s. 142.01, F.S., the fine and forfeiture fund was a county fund for the payment of county obligations for criminal expenses, fees, and costs, with any surplus funds to be transferred to the county general fund. Chapter 2003-402, Laws of Florida, amended s. 142.01, F.S., providing that the fine and forfeiture fund was to be established by the clerk of the circuit court for use by the clerk in performing court-related functions. Thus s. 318.18(14), F.S., was enacted to replace county revenues that were lost when the revenues from the fine and forfeiture fund transferred to the clerk of the circuit court.

<sup>3</sup> The language identifying the City of Jacksonville-Duval County and Miami-Dade County is the same as used in s. 318.18(14). See *supra* note 1.

the prosecuting attorney, the jury, and the court's bailiff and clerk. The judge is the only adult directly involved in the proceedings. Teens who accept the verdict of their peers and successfully complete the sanction imposed receive a clear record.<sup>4</sup>

Section 938.19, F.S., authorizes the board of county commissioners in each county where a Teen Court has been created, to adopt a mandatory court cost to be assessed in specific cases to operate and administer teen courts. Section 938.19(2), F.S., provides that:

A sum of up to \$3 shall be assessed as a court cost in the circuit and county court in the county against each person who pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of a criminal law or a municipal or county ordinance ....

In *E.J. v. State*, the court held that the \$3 court cost pursuant to s. 938.19, F.S., does not apply to juvenile cases.<sup>5</sup> The court explained s. 938.19, F.S., does not specifically authorize the imposition of the \$3 cost in juvenile cases and that juveniles are not deemed to be "convicted" by adjudications of delinquency.<sup>6</sup> In *V.K.E. v. State*, the Florida Supreme Court held that unless the Legislature expressly makes a cost or surcharge applicable to juvenile delinquency cases, those costs or surcharges are not applicable to juveniles.<sup>7</sup> The court noted that if the Legislature expressly provides for an assessment in juvenile proceedings, then the plain meaning of such a provision would control. The court stated that s. 938.03(1), F.S., is an example of a statute that made it clear that the Legislature intended a court cost to be assessed in juvenile cases.<sup>8</sup> The pertinent language of the statute provides that "[a]ny person pleading guilty or nolo contendere to, or being convicted of or *adjudicated delinquent for*, any felony, misdemeanor, *delinquent act*, or criminal traffic offense under the laws of this state or the violation of any municipal or county ordinance ... shall pay as an additional cost in the case ...."<sup>9</sup>

### III. Effect of Proposed Changes:

#### Surcharges for Traffic Infractions and Violations, and Criminal Offenses

Existing law authorizes counties meeting certain conditions<sup>10</sup> to impose a surcharge for traffic infractions in order to service bonds issued prior to 2003 for the funding of state-court facilities.<sup>11</sup> This bill provides that if the surcharge generates surplus revenues exceeding the debt service on the bonds, these counties may use the surplus to:

1. Pay down the debt service;
2. Fund additional court-facility projects that the chief judge certifies as necessary for specified purposes; or

<sup>4</sup> Florida Teen Court List, <http://www.flteencourt.org>.

<sup>5</sup> *E.J. v State*, 912 So. 2d 382, 383 (Fla. 2d DCA 2005).

<sup>6</sup> *Id.* at 384.

<sup>7</sup> *V.K.E. v. State*, 934 So. 2d 1276, 1282 (Fla. 2006).

<sup>8</sup> *Id.*

<sup>9</sup> Section 938.03(1), F.S., (emphasis added).

<sup>10</sup> Counties meeting those conditions include: Miami-Dade, Hillsborough, and Bay.

<sup>11</sup> Section 318.18(13)(b), F.S.

### 3. Support local law libraries.

Based on the certification of need by the chief judge, those counties are also authorized to levy this surcharge concurrently with another traffic-infraction surcharge that other counties may levy to fund additional state-court facilities.<sup>12</sup>

Under the bill, a chief judge may certify the need for additional state-court facilities for the following reasons:

1. Unexpected caseload growth;
2. Emergency requirements to accommodate public access;
3. Threats to courthouse safety;
4. The need to support local law libraries; and
5. Other exigent circumstances.

The bill deletes the provision in s. 318.18, F.S., that would have repealed on September 30, 2007, the authority to impose certain surcharges. By deleting the repeal provision, certain local governments may continue to impose a \$15 surcharge on non-criminal traffic infractions and criminal traffic violations specified in s. 318.17, F.S., for the purpose of replacing revenue from fines deposited into the fine and forfeiture fund established by the clerk of the circuit court in each county.

The bill amends s. 939.185(1)(a), F.S., adding *adjudicated delinquent for delinquent acts* to the criteria specifying who may be assessed an additional court cost of up to \$65. The bill also amends s. 939.185(1)(b), F.S., adding *adjudicated delinquent for delinquent acts* to the criteria specifying who may be assessed a surcharge of \$85 by certain local governments. The addition of the language *adjudicated delinquent for delinquent acts* should satisfy the Florida Supreme Court's requirement in *E.J. v. State* that the Legislature must expressly provide for an assessment in juvenile proceedings. The bill deletes the provision in s. 939.185(1)(b), F.S., that would have repealed, on September 30, 2007, the authority to impose the \$85 surcharge.

### **Teen Courts**

The bill adds *adjudicated delinquent for delinquent acts* to the criteria of s. 938.19, F.S., which specify who may be assessed court costs of up to \$3 to be used to operate and administer Teen Courts. As with the revisions to s. 939.185(1)(a), (b), F.S., the addition of the language *adjudicated delinquent for delinquent acts* should satisfy the Florida Supreme Court's requirement in *E.J. v. State* that the Legislature must expressly provide for an assessment in juvenile proceedings.

The bill provides that it takes effect on July 1, 2007.

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<sup>12</sup> Section 318.18(13)(a), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill expands the persons who may be required to pay certain court costs and surcharges. The bill provides that persons adjudicated delinquent for delinquent acts may be assessed up to \$3 in court costs to be used to administer and operate Teen Courts. Persons adjudicated delinquent for delinquent acts under state law may pay up to \$65 in court costs and, in Miami-Dade County and the City of Jacksonville-Duval County, may pay an additional \$85 in surcharges.

The abrogation of the repeal of the authority for certain local governments under s. 318.18(14) and s. 939.185(1)(b), F.S., to impose certain surcharges, means that citizens who would no longer be subject to those surcharges will incur greater costs for the violation of certain laws.

**C. Government Sector Impact:**

The abrogation of the repeal of the authority for certain local governments under s. 318.18(14) and s. 939.185(1)(b), F.S., to impose certain surcharges, means that those local governments will continue to have a source of revenue, which was otherwise scheduled to terminate. This bill also authorizes certain counties that are currently authorized to levy a surcharge for the service of bonds issued prior to 2003 for the funding of state-court facilities under s. 318.18(13)(b), F.S., to concurrently impose another traffic-infraction surcharge that other counties may levy to fund state-court facilities under s. 318.18(13)(a), F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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