

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: CS/CS/SB 858

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Judiciary Committee and Senator Joyner

SUBJECT: Noncriminal Traffic Offenses/Community Service

DATE: April 22, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------------|
| 1. | Paradise | Meyer | TR | Fav/1 amendment |
| 2. | Sumner | Maclure | JU | Fav/CS |
| 3. | Hendon | Sadberry | JA | Fav/CS |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill provides that a person ordered to pay a civil penalty for a noncriminal traffic infraction may satisfy the civil penalty by participating in community service in lieu of fee payment when they can demonstrate financial hardship to the court. This could result in a fewer traffic fines collected and would reduce the budgets of the clerk of court and revenues deposited into the General Revenue Fund by an indeterminate amount.

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. It also 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 provides that notwithstanding any other provision of law, a person’s driver’s license may not be suspended for failure to pay a civil penalty without a finding that the person has the ability to pay.

The bill deletes current provisions of s. 318.18(8)(b), F.S., that are addressed by similar provisions in the bill language.

This bill amends section 318.18, Florida Statutes.

II. Present Situation:

Traffic Infraction Penalties

Section 318.18, F.S., provides penalties for noncriminal traffic infractions, which typically must be paid within 30 days. The penalties include:

- A \$15 fine for pedestrian infractions, bicycle infractions, and certain other infractions involving persons under 14;
- A \$30 fine for all non-moving violations; failure to update a driver's license address; failure to carry certificate of title, vehicle registration, or driver's license; expiration of a driver's license; and failure to move over for an emergency vehicle;
- 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;
- A \$100 fine for failing to stop for a school bus, or \$200 for passing a school bus on the side from which children enter and exit, if the bus displays a stop signal;
- A \$100 fine for illegally parking in a handicap space;
- A \$100 fine for each failure to pay a toll when required;
- A \$100 fine for failing to obey railroad crossing signals;
- A \$25 fine for unlawfully operating an all-terrain vehicle under s. 316.2074, F.S.;
- A \$200 fine for overloading a vehicle or improperly securing a vehicle's load;
- A \$125 fine for failure to obey traffic signals generally, and red lights specifically; and
- A \$60 fine for any moving violation that is not otherwise specified and does not trigger a mandatory hearing.

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.;
- A \$3 fee for every infraction toward the Court Cost Clearing Trust Fund created by s. 938.01, 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;
- 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.; and
- Also, 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.

Additionally, 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. Boards of county commissioners may also require by ordinance a \$5 fine with any civil traffic penalty, to fund driver education programs.

Failure to Pay Citation 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 the order of suspension 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.

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,"¹ 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."

Even lacking a demonstration of financial hardship, a person may also, at the discretion of the court, be authorized to satisfy these civil penalties "by public works or community service in the same manner."

In comparison, as s. 938.30, F.S., details for 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

¹ The statute is not clear as to whether this refers to the state or federal minimum wage; however, s. 948.0345, F.S., provides that community service is valued at not less than the federal minimum wage when computing community service time in lieu of paying a fine.

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. Other prohibitions have far lower rates. Section 569.11, F.S., regarding underage possession of tobacco products or attempts to purchase tobacco products, states violations are punishable by 16 hours of community service, or a \$25 fine – a conversation rate of just over \$1.56 per hour. Section 386.212(3), F.S., prohibiting smoking near school property, includes an even lower rate (\$.50 per hour), stating violations are punished by a \$25 fine or 50 hours of community service. 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.

Driver’s License Suspension Study

As of November 30, 2007, there were 1,662 offenders in prison for driving with suspended licenses. These offenders had an average sentence length of 2.3 years. Based on a recent OPPAGA analysis of 904 of these inmates’ driving and criminal histories, almost all had prior criminal histories. However, some of these inmates had committed less serious driving and criminal offenses. (For instance, 157 inmates had histories consisting of excessive tickets or failure to pay, along with offenses like driving with a suspended license, property offenses, or non-forcible felonies. Out of the 157 inmates, 45 of them had prior suspensions for excessive tickets/other driving-related reasons and failure to pay, without any other criminal history.)

OPPAGA concluded its analysis by acknowledging the competing needs for resources and the limited number of prison beds and recommended that the Legislature consider alternatives to incarceration for less dangerous offenders convicted of driving with suspended licenses. Among other alternatives, OPPAGA suggested that the Legislature could revise the statutory eligibility for prison for certain types of offenders. OPPAGA acknowledged that there are benefits to incarcerating some offenders for driving while their license is suspended. Imprisonment prevents offenders from repeating the violation while incarcerated, thereby temporarily protecting public safety. However, incarceration is an expensive sanction. It costs the state approximately \$19,300 per year to incarcerate an inmate in a state prison, or \$32.1 million per year to house the 1,662 offenders imprisoned for driving with suspended licenses.

Section 322.34(2), F.S., provides criminal penalties for knowingly driving with a suspended, revoked, or canceled license. Any person whose driver’s license or driving privilege has been suspended, revoked, or canceled (except a habitual traffic offender) who drives with knowledge of such suspension, revocation, or cancellation, commits a second-degree misdemeanor on the first conviction (up to 30 days in jail and a \$500 fine); a first-degree misdemeanor on the second conviction (up to 60 days in jail and a \$1,000 fine); and a third-degree felony on the third or subsequent conviction (up to five years in prison and a \$5,000 fine). (Subsection (1) of this

section provides it is a moving violation if a person does not have knowledge of the suspension and drives with a suspended, revoked, or canceled license.)

A habitual traffic offender who drives with a suspended, revoked, or canceled license commits a third-degree felony under s. 322.34(5), F.S. One way to become a habitual traffic offender is to drive with a suspended or revoked license three times within five years under s. 322.264(1)(d), F.S. There is no distinction under either of these statutes regarding what underlying violation was committed to qualify a person for a driving with a suspended license conviction. For instance, underlying violations can be for failing to pay child support, failing to pay court fines or fees, or failing to comply with a court order.

III. Effect of Proposed Changes:

The bill amends s. 318.18(8)(b), F.S. to provide that 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 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 non-criminal traffic infractions.

The bill values community service at the “specified hourly credit rate per hour.” This phrase is defined as either:

- The federal minimum wage, specifically 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 an employer subject to that provision must pay per hour to each employee who is subject to that provision, or
- 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.

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 agency 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 drivers license from being suspended for failure to pay a civil penalty, absent a finding that the person has the ability to pay.

The bill deletes current provisions of s. 318.18(8)(b), F.S., that are addressed by similar provisions in the bill language. It adds a provision that prohibits the suspension of a person's driver's license for failing to pay a civil penalty without a finding that the person has the ability to pay.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

A local government mandate could be created by the bill if the conversion of noncriminal traffic fines to community service results in significantly lower revenue to the clerk of courts and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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.

C. Government Sector Impact:

State Government:

The state could experience a negative fiscal impact under the bill. Fines recovered for traffic infractions that occur in unincorporated areas are split between the clerk of the court and certain state trust funds. The clerk of courts are funded through service charges, court costs, fees, and fines. Excess revenue from the clerk of courts is deposited in the

General Revenue Fund to assist in funding the judicial branch. For fiscal year 2007-08, the clerks are estimated to deposit \$105 million into the General Revenue Fund. The extent to which traffic fines are converted into community service, the state would see a reduction in general revenue by an indeterminate amount.

The bill may result in fewer prison commitments that result from driving on a suspended license. This would result in a positive fiscal impact to the state.

Local Government:

The clerk of courts could experience a negative impact under the bill. Fines recovered for noncriminal traffic infractions that occur in unincorporated areas are shared with the clerk of the court. Any reduction in such revenues due to community service would negatively impact clerk of court budgets.

Fines recovered for noncriminal traffic infractions that occur in municipal areas are shared with local governments. Any reduction in such revenues due to community service would negatively impact municipal budgets.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal and Civil Justice Appropriations on April 22, 2008:

The committee substitute removes the provision allowing persons not under a financial hardship to perform community service rather than pay a traffic fine.

CS by Judiciary on April 8, 2008:

The committee substitute is substantially similar to the original bill language except that:

- It deletes the current language in s. 318.18(8)(b), F.S., and revises it to provide for when a person may participate in community service in lieu of paying a fine for a noncriminal traffic infraction; and
- It deletes language that provided that a person may not be imprisoned for defaulting on payment of a civil penalty if the person does not have the ability to pay. As traffic infractions are specifically noncriminal offenses, imprisonment is not authorized under current law.

B. Amendments:

None.

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