



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #424

Penalty Surcharge (DOA -- General Agency Provisions, Corrections --Departmentwide, Justice, Public Defender, and DPI -- Categorical Aids and Administrative and Other Funding)

[LFB 2011-13 Budget Summary: Page 27, #23, Page 145, #12, Page 273, #7,
Page 340, #7, Page 352, #10, and Page 371, #9]

CURRENT LAW

Whenever a court imposes a fine or forfeiture for a violation of state law or municipal or county ordinance (except for violations involving smoking in restricted areas, failing to properly designate smoking or nonsmoking areas, nonmoving traffic violations or violations of safety belt use), the court also imposes a penalty surcharge of 26% of the total fine or forfeiture. Penalty surcharge revenues are allocated to appropriations in five state agencies to support specific program activities. It is estimated that the penalty surcharge fund will conclude the 2009-11 biennium with a deficit of \$5,122,400.

GOVERNOR

Reduce penalty surcharge funded appropriations in five different state agencies by 10% annually (generally after standard budget adjustments). As a result, reduce expenditure authority under these appropriations by \$1,904,500 PR in 2011-12, and by \$1,905,600 PR in 2012-13.

DISCUSSION POINTS

1. Since the introduction of the bill, the Department of Justice (DOJ) has indicated that, due to reduced training costs for new law enforcement recruits (the Department has observed a decline in hiring by local law enforcement agencies), it anticipates expending \$600,000 PR less than provided for these costs during 2010-11. Adjusting for these anticipated decreased costs, Table 1 reflects the fund condition for the penalty surcharge if the 10% annual reduction to penalty surcharge appropriations, as recommended by the Governor, were not adopted. While the fund would begin the 2011-12 fiscal year with a deficit of \$5,122,400 PR, without the funding reductions the penalty surcharge fund would be projected to end the biennium with a deficit of \$6,557,000 PR. [Alternative 6]

TABLE 1

**Penalty Surcharge Fund Condition if the 10% Budget
Reductions to Fund Appropriations Deleted**

<u>Item</u>	<u>2011-12</u>	<u>2012-13</u>
Opening Balance	-\$5,122,400	-\$5,903,300
Revenue	18,000,000	18,000,000
 Appropriations		
<i>Department of Justice</i>		
Law enforcement training fund, local assistance	\$4,849,800	\$4,849,800
Law enforcement training fund, state operations	3,391,700	3,391,700
Crime laboratory equipment and supplies	342,300	342,300
Law enforcement TIME system	815,300	815,300
Drug enforcement intelligence operations	1,728,300	1,731,400
Drug crimes enforcement; local grants	797,700	797,700
Reimbursement to counties for victim-witness services	<u>832,100</u>	<u>832,100</u>
Subtotal	\$12,757,200	\$12,760,300
 <i>Department of Corrections</i>		
Victim services and programs	\$274,100	\$274,100
Correctional officer training	<u>2,287,800</u>	<u>2,295,900</u>
Subtotal	\$2,561,900	\$2,570,000
 <i>Department of Public Instruction</i>		
Aid for alcohol and other drug abuse programs	\$1,427,500	\$1,427,500
Alcohol and other drug abuse program	<u>668,700</u>	<u>668,700</u>
Subtotal	\$2,096,200	\$2,096,200
 <i>Department of Administration--Office of Justice Assistance</i>		
Law enforcement programs and youth diversion-administration	\$182,200	\$182,200
Youth diversion program	<u>747,100</u>	<u>747,100</u>
Subtotal	\$929,300	\$929,300
 <i>Office of the State Public Defender</i>		
Conferences and training	\$141,800	\$141,800
 Appropriation Total	 \$18,486,400	 \$18,497,600
Supplements & Reserves	\$294,500	\$156,100
Closing Balance	-\$5,903,300	-\$6,557,000

2. Under the bill, the Governor would reduce penalty surcharge funded appropriations in five different state agencies by 10% annually, resulting in reductions of \$1,904,500 PR in 2011-12, and \$1,905,600 PR in 2012-13. The administration indicates that this reduction was applied in order to address a growing deficit in the fund. The administration also indicates that, "This reduction is also comparable to the reduction applied to most GPR and PR appropriations statewide." Table 2 reflects the fund condition for the penalty surcharge under the bill. While the

fund would begin the 2011-12 fiscal year with a cumulative deficit of \$5,122,400 PR, it is projected to end the biennium with a deficit of \$2,746,900 PR. [Alternative 1]

TABLE 2

Penalty Surcharge Fund Condition under SB 27/AB 40

<u>Item</u>	<u>2011-12</u>	<u>2012-13</u>
Opening Balance	-\$5,122,400	-\$3,998,800
Revenue	18,000,000	18,000,000
Appropriations		
<i>Department of Justice</i>		
Law enforcement training fund, local assistance	\$4,364,800	\$4,364,800
Law enforcement training fund, state operations	3,033,000	3,033,000
Crime laboratory equipment and supplies	308,100	308,100
Law enforcement TIME system	726,600	726,600
Drug enforcement intelligence operations	1,548,300	1,551,100
Drug crimes enforcement; local grants	717,900	717,900
Reimbursement to counties for victim-witness services	<u>748,900</u>	<u>748,900</u>
Subtotal	\$11,447,600	\$11,450,400
Victim services and programs	\$245,200	\$245,200
Correctional officer training	<u>2,043,500</u>	<u>2,050,800</u>
Subtotal	\$2,288,700	\$2,296,000
<i>Department of Public Instruction</i>		
Aid for alcohol and other drug abuse programs	\$1,284,700	\$1,284,700
Alcohol and other drug abuse program	<u>599,800</u>	<u>599,800</u>
Subtotal	\$1,884,500	\$1,884,500
<i>Department of Administration--Office of Justice Assistance</i>		
Law enforcement programs and youth diversion-administration	\$161,800	\$161,800
Youth diversion program	<u>672,400</u>	<u>672,400</u>
Subtotal	\$834,200	\$834,200
<i>Office of the State Public Defender</i>		
Conferences and training	\$126,900	\$126,900
Appropriation Total	\$16,581,900	\$16,592,000
Supplements & Reserves	\$294,500	156,100
Closing Balance	-\$3,998,800	-\$2,746,900

3. Under current law, program revenue accounts may not operate in cash deficit. Under s. 16.40(7) of the statutes, the Department of Administration (DOA) is required to collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues. Under s. 16.513 of the statutes, if DOA projects that there are insufficient moneys, assets, or accounts receivable to cover expenditures under a program revenue appropriation(s), the affected agencies must propose and submit to DOA a plan to assure

that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation(s). Any such plan approved by DOA must be forwarded to the Joint Committee on Finance for its approval under 14-day passive review.

4. On November 29, 2010, DOA submitted an s. 16.513 report related to 10 state agencies for 2008-09. While the report was of limited value because it related to a previously completed fiscal year and thus provided no time for meaningful Committee input, it did indicate appropriations that were in a negative cash situation. Included in the report was the penalty surcharge receipts appropriation under DOJ. According to the report: "The department anticipates that if no increases in spending are authorized and revenues remain constant, this appropriation can be expected to cover costs and ease the shortfall growth. The Governor included measures to address this deficit in the last three biennial budgets and it is expected that the 2011-13 budget will once again examine the deficit and potential solutions." On December 16, 2010, an objection was raised to the report.

5. Under the Governor's recommendations, the deficit in the penalty surcharge fund would decrease from \$5,122,400 PR at the end of 2010-11, to \$2,746,900 PR at the end of 2012-13. During the second year of the upcoming biennium, penalty surcharge revenue would exceed expenditures by \$1,251,900. In order to avoid deeper reductions to programs supported by the penalty surcharge, and as the Governor's recommendations substantially reduce the deficit in the fund over the upcoming biennium, the Committee could provide that notwithstanding s. 16.513 of the statutes, DOA would not be required to submit a plan to the Joint Committee on Finance during the 2011-13 biennium to address the remaining deficit in the penalty surcharge fund. [Alternative 2]

6. In order to eliminate the remaining deficit in the penalty surcharge fund, the Committee could reduce penalty surcharge funded appropriations in five different state agencies by 18% annually (generally after standard budget adjustments). The Department of Justice, in particular has raised concerns about the impact of the 10% reduction to various DOJ programs supported by the penalty surcharge. It could be anticipated that an 18% reduction to programs supported by the penalty surcharge would have substantial programmatic impacts to the affected agencies. This alternative would reduce expenditure authority under the affected appropriations by \$1,523,600 PR in 2011-12, and by \$1,524,500 PR in 2012-13, and leave the penalty surcharge fund with a positive closing balance of \$301,200 PR at the end of 2012-13. [Alternative 3]

7. Department of Justice staff have expressed concerns about penalty surcharge reductions to three programs under the bill: (a) the transaction information for the management of enforcement (TIME) system, which provides law enforcement agencies across the state access to a variety of law enforcement-related databases (an annual reduction of \$88,700 PR in penalty surcharge funding); (b) anti-drug activities at DOJ, specifically funding for drug enforcement tactical and strategic intelligence units (an annual reduction of \$180,000 PR in penalty surcharge funding); and (c) reimbursements to counties for providing victim and witness services (an annual reduction of \$83,200 PR in penalty surcharge funding). The Department has also requested reducing funding for training costs for new local law enforcement recruits by \$100,000 PR in 2011-12, but providing increased funding for these costs of \$100,000 PR in 2012-13. The Department indicates that this latter request represents a re-estimate of the funding it believes it would need for these training costs in the upcoming biennium. [Alternative 3]

8. If the TIME reduction was implemented, the Department has raised the concern that it would have staffing implications and reduce the level of maintenance and support for the system, potentially "risking a lengthy shutdown of TIME services during non-standard business hours." Department staff further indicates that the reduction in penalty surcharge funding for anti-drug activity would force the Department to hold two special agent positions vacant which are assigned to narcotics investigations. Finally, the Department indicates that the reductions in funding to reimburse counties for providing victim and witness services would shift more of the cost of providing these services on to the counties. "In anticipation of these cuts, county boards and county executives are, even now, recommending vacant victim/witness staff positions not be filled, and/or reducing hours or eliminating existing positions."

9. In response to these concerns the Committee could consider deleting the 10% annual reduction in penalty surcharge funding to these programs and restore \$351,900 PR annually in expenditure authority. The Department would also argue that as it will not utilize \$600,000 in expenditure authority for local law enforcement training costs in 2010-11, that this unutilized expenditure authority could be viewed as providing a substantial source of funding for this alternative. This alternative would increase the closing deficit in the penalty surcharge fund from \$2,746,900 PR at the end of 2012-13 under the bill, to \$3,450,700 PR at the end of 2012-13. [Alternative 4]

10. Under Alternative 4, the deficit in the penalty surcharge fund would decrease from \$5,122,400 PR at the end of 2010-11, to \$3,450,700 PR at the end of 2012-13. During the second year of the biennium penalty surcharge revenue would still exceed expenditures by \$800,000 PR under this alternative. In order to avoid deeper reductions to programs supported by the penalty surcharge, and as Alternative 4 would reduce the deficit in the fund by \$1,671,700 PR over the biennium, the Committee could provide that notwithstanding s. 16.513 of the statutes, DOA would not be required to submit a plan to the Joint Committee on Finance during the 2011-13 biennium to address the remaining deficit in the penalty surcharge fund. [Alternative 2]

11. In order to eliminate the remaining deficit in the penalty surcharge fund but exempt the four DOJ appropriations identified above from reductions, the remaining penalty surcharge funded appropriations in five state agencies could be reduced by 27% annually (generally after standard budget adjustments). It could again be anticipated that reductions of this scope would have substantial programmatic impacts to the affected agencies. This alternative would reduce expenditure authority under the affected appropriations by \$1,563,000 PR in 2011-12, and by \$1,364,400 PR in 2012-13, and leave the penalty surcharge fund with a positive closing balance of \$180,500 PR at the end of 2012-13. [Alternative 5]

ALTERNATIVES

1. Approve the Governor's recommendation to reduce penalty surcharge funded appropriations in five different state agencies by 10% annually (generally after standard budget adjustments). Reduce expenditure authority under these appropriations by \$1,904,500 PR in 2011-12, and by \$1,905,600 PR in 2012-13.

2. Provide that notwithstanding s. 16.513 of the statutes, DOA is not required to submit a plan to the Joint Committee on Finance during the 2011-13 biennium to address the deficit in the

penalty surcharge fund.

3. Reduce penalty surcharge funded appropriations in five different state agencies by 18% annually (generally after standard budget adjustments). Reduce expenditure authority under these appropriations by an additional \$1,523,600 PR in 2011-12, and by \$1,524,500 PR in 2012-13.

ALT 3	Change to Bill
	Funding
PR	- \$3,048,100

4. Delete the recommendation to reduce the following Department of Justice programs by 10% annually: (a) \$88,700 PR annually for the transaction information for the management of enforcement (TIME) system, which provides law enforcement agencies across the state access to a variety of law enforcement-related databases; (b) \$180,000 PR annually for anti-drug activities at DOJ, specifically funding for drug enforcement tactical and strategic intelligence units; and (c) \$83,200 PR annually for reimbursements to counties for providing victim and witness services. As a result, this alternative would restore \$351,900 PR annually in expenditure authority. In addition, reduce funding for training costs for new local law enforcement recruits by \$100,000 PR in 2011-12, but provide increased funding for these costs of \$100,000 PR in 2012-13, as a re-estimate of funding needed for these training costs in the upcoming biennium.

ALT 4	Change to Bill
	Funding
PR	\$703,800

5. Reduce penalty surcharge funded appropriations in five different state agencies (except for DOJ appropriations for the TIME system, drug enforcement intelligence operations, local law enforcement training, and reimbursement to counties for victim and witness services) by 27% annually (generally after standard budget adjustments). Reduce expenditure authority under these appropriations by an additional \$1,563,000 PR in 2011-12, and by \$1,364,400 PR in 2012-13.

ALT 5	Change to Bill
	Funding
PR	- \$2,927,400

6. Delete provision.

ALT 6	Change to Bill
	Funding
PR	\$3,810,100

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