

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 721** HLS 15RS 995
 Bill Text Version: **ENGROSSED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: May 20, 2015	1:15 PM	Author: IVEY
Dept./Agy.: Revenue		Analyst: Deborah Vivien
Subject: Increase various LDR penalties		

REVENUE SECRETARY EG +\$5,900,000 GF RV See Note Page 1 of 2
 Provides relative to penalties collected by the Department of Revenue

Current law imposes a fee for insufficient funds for income tax payments of 1% of the check or, if less than \$500, the greater of \$5 or the amount of the check. All other insufficient funds payments are subject to the greater of \$20 or 1% of the payment. This fee can be waived by the Secretary. Any waiver in excess of \$25,000 requires the approval of the Board of Tax Appeals. Current law imposes a \$500 fine on dealers who do not keep sales tax records as mandated. Current law imposes a penalty for negligence with no intent to defraud of 5% with a \$10 minimum. Current law imposes a late penalty of 5% (0.5% for personal income tax) each 30 days of delinquency and requires 90% of income tax to be paid by withholding, estimated payments or other payments on or before the due date of the return.

Proposed law removes the Board of Tax Appeals waiver approval requirement as of 12/31/15 and directs the Secretary to publish all penalty, fee or fine waivers in excess of \$50,000 (except those waived under the voluntary disclosure program) in the LDR Annual Report beginning 1/1/16 with taxpayer waiver acceptance as confidentiality consent. (Continued on Page 2)

EXPENDITURES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	\$0	\$0	\$0	\$0	\$0	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$5,900,000	\$5,900,000	\$5,900,000	\$5,900,000	\$5,900,000	\$29,500,000
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Annual Total						

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure.

REVENUE EXPLANATION

This bill increases SGR for the Department of Revenue by increases various fees for insufficient funds, negligence, late payments and required record maintenance. A small amount may be returned to local taxing authorities, including some negligence and late fees for hotel/motel sales tax. However, the authority for local taxing authorities to charge insufficient funds fees for local tax payments is repealed in this bill, which will decrease local revenue. The extent of these receipts is unknown.

Insufficient Funds - \$3,500

The bill increases the minimum fee for each payment returned for insufficient funds to the greater of \$35 or 1% of the payment due, though the Secretary has the authority to waive the fee. The current minimum is \$20 per instance (maybe slightly less than that for income tax). According to LDR, the department collected \$138,000 in NSF fees during FY 14, and this increase in the minimum fee would have provided about \$3,500. This fee can be waived at the Secretary's discretion.

Negligence - \$5.4M

The penalty for negligence is increasing from the greater of \$10 or 5% of taxes due to 10% of taxes due, which the Secretary can waive. For offenses of 25% or more of federal gross income with demonstrated disregard for state tax law, the penalty increases to a mandatory 25% of taxes due, which the Secretary may not waive. Per LDR, if this debt is referred to centralized collections, it will also be subject to an additional mandatory 25% penalty, including the negligence penalty. Using the average negligence penalties collected over the last three years and assuming all were assessed at 5% of taxes, raising the fee to 10% of taxes due would increase penalties by \$5.4M per year.

Late Payments - \$500,000

Late payment fines are not changed but the requirement that 90% payment of income tax must be made by the due date through withholding or other payments is eliminated in this bill. Eliminating the 90% requirement means 100% must be paid which would increase penalties for those paying between 90-99%. LDR reports an anticipated increase in penalties of about \$500,000 due to this provision.

Dealer Record Maintenance - no fee revenue anticipated since dealers are more likely to comply than pay the fee.

It is not clear from the bill how late payments and negligence penalties are treated if the delinquent debt is also subject to mandatory fees. Thus, the cumulative amount of penalties on delinquent debt is uncertain.

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|--|----------------------------|-------|--|
| Senate | <u>Dual Referral Rules</u> | House | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S} |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H} | | | <input type="checkbox"/> 6.8(F)(2) >= \$500,000 Rev. Red. to State {H & S} |
| <input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H} | | | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} |

Gregory V. Albrecht
Chief Economist

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CONTINUED EXPLANATION from page one:

Page 2 of 2

Summary (Continued from Page 1)

Proposed law increases the insufficient funds penalty for all payments to the greater of \$35 or 1% of the payment. Proposed law doubles the fine for dealers not keeping sales tax records as mandated from \$500 to \$1,000. Proposed law gives the Secretary discretion to impose a penalty of 10% of the negligent deficiency. If the offense is 25% or more of federal gross income with reckless disregard for state tax law, the Secretary will impose a mandatory penalty of 25% of the deficiency. Proposed law retains the late payment fines but removes the requirement of 90% payment of income tax by the due date through withholding or other payments. Proposed law repeals the authorization for local taxing authorities to charge insufficient funds fees.

Senate

Dual Referral Rules

House

6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}

13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}

6.8(F)(2) >= \$500,000 Rev. Red. to State {H & S}

13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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