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COURTS Payment and Disposition of Fines and Forfeitures: Provide Funding for Local Victim Assistance Programs; Provide for Additional Charge When Filing Real Estate Documents to Fund a Feasibility Study Regarding Creation of State-Wide Computer Information System for Real Estate and Personal Property Records

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COURTS

Payment and Disposition of Fines and Forfeitures: Provide Funding for Local Victim Assistance Programs; Provide for Additional Charge When Filing Real Estate Documents to Fund a Feasibility Study Regarding Creation of State-Wide Computer Information System for Real and Personal Property Records

CODE SECTIONS: O.C.G.A. §§ 15-6-77 (amended), -97 to -98, 15-21-130 to -134 (new), 35-6A-7 (amended)
BILL NUMBER: SB 114
ACT NUMBER: 236
GEORGIA LAWS: 1995 Ga. Laws 260
SUMMARY: The Act increases the fee for filing real and personal property instruments and adds a surcharge to criminal fines. The five-percent penalty added to criminal fines is used to fund approved victim assistance programs. Additionally, the Act imposes a five-dollar filing fee for any documents pertaining to real property to fund a study of an online computer index of real and personal property records for statewide use.
EFFECTIVE DATE: July 1, 1995¹

History

Victim Assistance Funding

In 1994, Representative Ann R. Purcell drafted legislation to fund victim assistance programs.² However, this legislation applied only to Effingham County, Georgia.³ In 1995, Lieutenant Governor Pierre Howard sought to provide a state-wide program for local victim assistance as part of his legislative package.⁴ The

1. O.C.G.A. §§ 15-21-130 to -134, 35-6A-7 only apply to offenses committed on or after July 1, 1995. Sections 1 and 2 of the Act fund a temporary study and will be automatically repealed on July 1, 1996. 1995 Ga. Laws 260, § 6.

2. Telephone Interview with Rep. Ann R. Purcell, House District No. 147 (Apr. 28, 1995) [hereinafter Purcell Interview].

3. *Id.*

4. Telephone Interview with Sen. Jack Hill, Senate District No. 4

Lieutenant Governor's office modeled its state-wide program on the Effingham County program, which had proved very successful.⁵ Thus, SB 114 was introduced.⁶

Automating Personal and Real Property Records

The portion of SB 114 relating to add-on filing costs for real estate documents was originally introduced as HB 886.⁷ The additional revenue was to be allocated to a feasibility study to determine whether an online, state-wide computerized system for real and personal property records would be practical.⁸ HB 886 was vigorously opposed and died on the floor.⁹

In an effort to resurrect HB 886, the filing fee add-on cost provisions were attached to SB 114.¹⁰ Representative Tommy Chambless, House Judiciary Committee Chairman, was one of the main forces behind the revival of this legislation.¹¹ This portion of the bill was expected to generate approximately \$1.5 to \$2 million to study the feasibility of automating county records.¹²

(Apr. 27, 1995) [hereinafter Hill Interview].

5. *Id.*; Purcell Interview, *supra* note 2.

6. Hill Interview, *supra* note 4; Purcell Interview, *supra* note 2.

7. Hill Interview, *supra* note 4.

8. Hill Interview, *supra* note 4.

9. Hill Interview, *supra* note 4; *see also* Telephone Interview with Rep. Robert A.B. Reichert, House District No. 126 (Apr. 27, 1995) [hereinafter Reichert Interview]. Rep. Reichert filed a minority "DO NOT PASS" report to SB 114. *Id.*

10. Reichert Interview, *supra* note 9. Woodson Daniel spoke in support of the filing fee add-ons in the House Judiciary Committee meeting on March 6, 1995. Telephone Interview with Woodson Daniel, Chairman of the Georgia Superior Court Clerks' Cooperative Authority (Apr. 27, 1995) [hereinafter Daniel Interview].

11. Reichert Interview, *supra* note 9; Daniel Interview, *supra* note 10. Rep. Chambless represents House District No. 163.

12. Record of Proceedings in the House Judiciary Committee (Mar. 6, 1995) (available in Georgia State University College of Law Library).

*SB 114**Victim Assistance Funding*

The Act adds five new provisions to chapter 21 of title 15.¹³ The intent of this new legislation is to provide funding for local victim assistance programs.¹⁴ Code section 15-21-131 adds a five-percent penalty to the fine assessed for any criminal conviction in a Georgia state, superior, or municipal court.¹⁵ This penalty is in addition to that collected for the Peace Officers' Annuity and Benefit Fund.¹⁶

In the bill, as introduced, these penalties would have been collected by the court and disbursed on a monthly basis to either: (1) an approved county victim assistance program in the county in which the fines were imposed; or (2) the Criminal Justice Coordinating Council (Council) for disbursement as grants to approved victim assistance programs in other counties, if the county where the fine was imposed did not have a victim assistance program.¹⁷

Both Representative Chambless and Representative Cathy Cox, of the 160th District, were concerned about the diversion of funds from counties in which no approved victim assistance program existed.¹⁸ SB 114, as introduced, would have redistributed the funds to other counties at the discretion of the Council.¹⁹ Representatives Chambless and Cox questioned the constitutionality of assessing a criminal penalty in one county and using the funds in another.²⁰

Representative Greg Kinnamon, of the 4th District, suggested a compromise that was approved by the House and is found in

13. O.C.G.A. §§ 15-21-130 to -134 (Supp. 1995).

14. *Id.* § 15-21-130.

15. *Id.* § 15-21-131. The language "municipal court" was added to the final version of SB 114 after a municipal court judge from DeKalb county spoke in favor of this addition in the House. Hill Interview, *supra* note 4.

16. O.C.G.A. § 15-21-131(b) (Supp. 1995). This additional penalty concerns Rep. Reichert because there are already so many add-on costs to criminal penalties. See Reichert Interview, *supra* note 9. For example, in addition to the Peace Officers' Annuity and Benefit Fund, there are add-ons for drug rehabilitation and probation officers. Reichert Interview, *supra* note 9.

17. SB 114, as introduced, 1995 Ga. Gen. Assem.

18. Hill Interview, *supra* note 4.

19. SB 114, as introduced, 1995 Ga. Gen. Assem.

20. Hill Interview, *supra* note 4.

the Act.²¹ If a county does not have an approved victim assistance program, the funds will be paid to the district attorney's office in the judicial circuit in which the penalty was assessed, rather than to the Council for redistribution to another county.²² This language has engendered a substantial amount of controversy.²³ Some district attorneys' offices are now trying to claim the entire amount of funds collected in their regions,²⁴ even if the county has an approved victim assistance program.²⁵

Code sections 15-21-133 and -134 provide for sanctions against collecting governmental agencies.²⁶ If the agencies fail to remit funds collected within sixty days of the required date, an additional penalty of five percent of the principal amount will become due for each month the amount is delinquent, not to exceed twenty-five percent of the principal amount.²⁷ The original bill provided that any person with the duty to collect and remit these sums, who failed or refused to do so, would be guilty of a misdemeanor.²⁸

A Senate floor amendment deleted the word "fails," so that a person would not be guilty of a misdemeanor for negligently failing to remit fees.²⁹ The Act provides that failure to remit fees must be purposeful.³⁰ Finally, the Act amends Code section 35-

21. Hill Interview, *supra* note 4; see O.C.G.A. § 15-21-132(a) (Supp. 1995).

22. O.C.G.A. § 15-21-132(a) (Supp. 1995); see also Hill Interview, *supra* note 4. The Criminal Justice Coordinating Council may promulgate rules governing the approval of local victim assistance programs. O.C.G.A. § 15-21-132(b) (Supp. 1995). These programs are designed to provide assistance to crime victims in "understanding and dealing with the criminal justice system as it relates to the crimes committed against them." *Id.*

23. Hill Interview, *supra* note 4.

24. Hill Interview, *supra* note 4.

25. Hill Interview, *supra* note 4. Rep. Hill has suggested that, rather than distributing the funds directly to the district attorneys' offices when there is no victim assistance program, the funds should go directly to the county commission to determine where the money should be allocated. Hill Interview, *supra* note 4.

26. O.C.G.A. §§ 15-9-133 to -134 (Supp. 1995).

27. *Id.* § 15-21-133. The required date is "the last day of the month following the month in which [the funds] are collected." *Id.*

28. SB 114, as introduced, 1995 Ga. Gen. Assem.

29. SB 114 (SFA), 1995 Ga. Gen. Assem.

30. O.C.G.A. § 15-21-134 (Supp. 1995). This language was changed on the floor after Sen. G.B. "Jake" Pollard, Senate District No. 24, a county clerk, argued that only the refusal to remit funds should be a misdemeanor because clerks do not always have the authority to remit funds. See Hill

6A-7, thus giving the Council authority over victim assistance programs.³¹

Real and Personal Property Records Funding

After HB 886 failed to win approval in the House, its provisions dealing with filing fee add-on costs were added to SB 114.³² The Act empowers the Georgia Superior Court Clerks' Cooperative Authority (Authority) to develop a state-wide automated information system for real and personal property records.³³ In addition, the Act delineates the Authority's powers and duties and authorizes a five-dollar add-on cost to each fee collected to study the feasibility of the automated system.³⁴ The Act also amends Code section 15-6-77, changing the fee schedule of superior court clerks to reflect the additional five-dollar fee.³⁵ Because the feasibility study is of limited duration, these portions of the Act will be automatically repealed after one year.³⁶

The only change in this portion of the bill was the insertion on the House floor of "cancellation of liens" under subsection (f) of Code section 15-6-77.³⁷ This was added because cancellation of liens language was inadvertently omitted from the original version of the bill.³⁸

Representative Robert A.B. Reichert attached a minority "DO NOT PASS" report to the House substitute of SB 114.³⁹ Representative Reichert reasoned that the victim assistance portion of the bill contained add-on costs that, when added to

Interview, *supra* note 4.

31. O.C.G.A. § 35-6A-7 (Supp. 1995).

32. The House Judiciary Committee added O.C.G.A. §§ 15-6-97 to -98. Compare HB 886, as introduced, 1995 Ga. Gen. Assem. with SB 114 (HCS), 1995 Ga. Gen. Assem.

33. O.C.G.A. § 15-6-97 (Supp. 1995). The Georgia Superior Court Clerks' Cooperative Authority strongly supported this legislation through its Chair, Woodson Daniel of Hawkinsville, Georgia, who spoke to the House Judiciary Committee on March 6, 1995. Daniel Interview, *supra* note 10.

34. O.C.G.A. § 15-6-98 (Supp. 1995).

35. *Id.*

36. 1995 Ga. Laws 260.

37. SB 114 (HCSFA), 1995 Ga. Gen. Assem.

38. Purcell Interview, *supra* note 2.

39. Reichert Interview, *supra* note 9; SB 114 (HCSFA), 1995 Ga. Gen. Assem. (Minority "DO NOT PASS" Report).

existing add-on costs, might reduce the actual initial fine that could be collected.⁴⁰ In addition, the minority report objected to the additional five-dollar fee for filing real estate documents to finance a study commission on a state-wide online computer index.⁴¹ Representative Reichert believes that this study group may be unnecessary due to already existing efforts by private online computer services.⁴² In addition, he believes that, because superior court clerks are "so protective over their things," they will resist privatization.⁴³

The legal community has also voiced opposition to this law. Many Georgia attorneys are concerned about costs to the consumer and potential delays in entering filings into the computer.⁴⁴ They argue that real estate filings must be transacted in the county where the property is located; therefore, a computerized system is unnecessary.⁴⁵ They also believe that it is more effective to check with the county clerk when doing a title search because the clerk's information is more current.⁴⁶ Computerized systems can lag one to two weeks behind actual

40. SB 114 (HCSFA), 1995 Ga. Gen. Assem. (Minority "DO NOT PASS" Report). Although Rep. Reichert is in favor of victim assistance programs, he believes this plan is not well thought out. Reichert Interview, *supra* note 9. He is concerned that judges may reduce the amount of the criminal fine due to the aggregate costs of the add-ons, which are based on a percentage of the initial fine. Reichert Interview, *supra* note 9. As a result, he believes this law may end up reducing the actual revenue to the county. Reichert Interview, *supra* note 9. He emphasized that there must be a more efficient way to fund these programs. Reichert Interview, *supra* note 9. He also noted that monetary fines are typically imposed on traffic offenders and white collar criminals, not rapists and bank robbers; therefore, the wrong individuals are paying for the program. Reichert Interview, *supra* note 9.

41. SB 114 (HCSFA), 1995 Ga. Gen. Assem. (Minority "DO NOT PASS" Report).

42. *Id.* Rep. Reichert noted that both the Fulton and DeKalb County Board of Commissioners have been approached by private groups that proposed to computerize the counties' records at no cost and sell these records to consumers for a fee. Reichert Interview, *supra* note 9.

43. Reichert Interview, *supra* note 9. Woodson Daniel questions why anyone would want to go somewhere other than to the county clerk to get their records. Daniel Interview, *supra* note 10.

44. Telephone Interview with Kathy Bradley, real estate attorney in Statesboro, Georgia (Apr. 27, 1995).

45. *Id.*

46. *Id.*

filing, which could create increased risks that title companies may not want to assume.⁴⁷

Supporters of the computerized system assert that there would not be any delays.⁴⁸ On the contrary, they contend that a computerized system can save time.⁴⁹ Supporters of the system also note that a request for this type of service came from the members of the Authority and that it is prudent for the State of Georgia to research alternatives which could improve the state-wide filing system.⁵⁰

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47. *Id.*

48. Daniel Interview, *supra* note 10.

49. Daniel Interview, *supra* note 10.

50. Daniel Interview, *supra* note 10.