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David R. Williams, Executive Director  
Georgia Superior Court Clerks'  
Cooperative Authority  
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Atlanta, Georgia 30345

RE: Senate Bill 226

Dear David:

This follows up our recent conversation regarding Senate Bill 226. A copy of the version that I reviewed is enclosed.

As you pointed out, as relevant to the Georgia Superior Court Clerks' Cooperative Authority ("Authority"), Section 2 of Senate Bill 226 enacts O.C.G.A. § 15-21-179 which will provide as follows:

- (a) In every case in which any court in this state shall impose a fine or bond payment, which shall be construed to include costs, for any violation of the traffic laws of this state or for violations of ordinances of political subdivisions which have adopted by reference the traffic laws of this state, **there shall be imposed as an additional penalty a sum equal to 5 percent of the original fine.**
- (b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this article.
- (c) This Code section shall be repealed in its entirety on June 30, 2008, unless extended by an Act of the General Assembly.

(emphasis added). Section 2 also enacts O.C.G.A. § 15-21-180 which will provide that:

- (a) The sums provided for in Code Section 15-21-179 shall be assessed and collected by the clerk or other court officer charged with the duty of collecting moneys from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Office of Treasury and Fiscal Services to be deposited into the general fund of the state treasury.<sup>1</sup>
- (b) Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a misdemeanor.

Section 7 provides as follows:

Section 2 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all traffic offenses committed on and after such date. The remaining sections of this Act shall become effective on January 1, 2007, subject to available funds.

From my review of Section 2 and Section 7, it appears that O.C.G.A. §§ 15-21-179 & 15-21-180 shall become effective upon approval by the Governor. If the Governor does not act with regard to Senate Bill 226 within forty days of adjournment, it will become law without action by the Governor. Ga. Const. Art. III, § V, ¶ XIII(a). Thus, it appears that courts should begin preparing to collect the additional penalty with respect to traffic offenses that are committed on and after the date that Senate Bill 226 becomes effective and the Authority should prepare to receive the funds collected.

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<sup>1</sup> I did not find a provision addressing when the Authority is required to remit the funds it receives to the Office of Treasury and Fiscal Services. As you know, there are confusing provisions regarding other amounts that the Authority collects. See O.C.G.A. § 15-21A-4(d) & 15-21-132(b). I assume that the Authority will simply remit the funds it receives in the same manner that it does other funds that are remitted by the Authority to the general fund of the state treasury. It is important to note that the administrative cost reimbursement provided for by O.C.G.A. § 15-21A-5(a) does not appear to apply to the additional penalty enacted by Senate Bill 226.

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We also discussed the language of Section 1 which amends O.C.G.A. § 15-6-95 to insert a new paragraph designated as (.1) in the superior court priority schedule to include “[t]he amount provided for in subsection (a) of Code Section 15-21-179.” As you know, O.C.G.A. § 15-6-95 establishes an order of priority for the distribution of criminal fines, forfeitures and costs by clerks of superior court that receive partial payments of such fines, forfeitures or costs. 2004 Op. Att’y Gen. 04-10. There are currently ten paragraphs in O.C.G.A. § 15-6-95 which address different amounts that are collected by clerks of superior court related to criminal cases. With the addition of a new paragraph designated as (.1), there will be eleven paragraphs. The new paragraph designated as (.1) will clearly come before the paragraph designated as (1). Thus, the penalty provided for in O.C.G.A. § 15-21-179 will be paid first from any partial payments received by clerks of superior court before any distributions are made to the amounts addressed in the other ten paragraphs. It is important to note that Section 7 provides that Section 1 does not become effective until January 1, 2007 at the earliest.<sup>2</sup> Therefore, while the additional penalty will become effective upon the Governor’s approval or upon it becoming law without his approval, the amendment to O.C.G.A. § 15-6-95 does not become effective until January 1, 2007 at the earliest.

I hope that this is helpful. If you have any questions, please contact me.

Sincerely,



W. WRIGHT BANKS, JR.  
Senior Assistant Attorney General

WWBjr/jgb  
enclosure

cc: Tom Lawler, Chairman w/encl.  
Barry Wilkes, Vice-Chairman w/encl.  
Jean Rogers, Secretary-Treasurer w/encl.

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<sup>2</sup> As we discussed, I have not analyzed in any detail how the reference to the availability of funds in Section 7 relates to the effective date of Section 1. From limited consideration, I am not sure how the availability of funds would impact the effective date of an amendment to O.C.G.A. § 15-6-95, but I can see how there would be an impact on other provisions of Senate Bill 226.