



# The Civil Penalty and Forfeiture Fund

Fiscal Brief

March 4, 2010

## Executive Summary

The Civil Penalty and Forfeiture Fund (CPFF) is a significant source of revenue for North Carolina's public schools. Currently, the CPFF generates over \$130 million per year to North Carolina's public schools budget. Additionally, the CPFF has been the subject of litigation that could have budgetary implications.

This Fiscal Brief provides a summary of the CPFF. The Brief explains where moneys in the CPFF come from, and how those moneys are appropriated. Additionally, the Brief summarizes major legislative action, and provides a summary of the litigation and court rulings related to CPFF.

## What Is Fines & Forfeitures?

"Fines & forfeitures" refers to the proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency. These moneys are deposited into the Civil Penalty and Forfeiture Fund (CPFF) and transferred to local education agencies (LEAs) via the State Public School Fund and the State School Technology Fund. The CPFF is administered by the Office of State Budget and Management (OSBM).

Examples of civil penalties, forfeitures, and fines include the following:

- Moneys collected by the Department of Transportation for misuse of dealer plates or axle weight violations
- Moneys collected by the Department of Commerce for credit unions' failure to file reports in a timely manner
- Moneys collected by the Employment Security Commission for overdue employer taxes, the late filing of reports, and for bad checks
- Moneys collected by the Department of Revenue for late filings, underpayments, and failure to comply.

- Moneys collected by the University of North Carolina system from traffic and parking tickets and vehicle registration.
- Moneys collected by the Department of Health and Human Services for violations of departmental vehicle regulations on the grounds of department institutions.

Criminal penalties and moneys collected from driving infractions are **not** examples of civil penalties, forfeitures, or fines, and therefore are not deposited into the CPFF. These moneys instead stay within the county where the infraction occurs, and are used locally to fund public schools in that county.

## What is the Legal Origin?

The basic premise of fines & forfeitures is laid out in Article IX, Sec. 7, of the North Carolina Constitution, which states that:

"...the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools."

Further guidance is provided by G.S. 115C-457.1 through 457.3. This section of statute:

1. Establishes the CPFF – where all collections of civil fines and penalties from State agencies are placed;
2. Defines which types of funds must be transferred to the CPFF;
3. Allows State agencies to keep up to 20% of collections to cover the cost of collection;<sup>1</sup>
4. Requires the State to allot moneys in the fund to LEAs based on average daily membership (ADM).

<sup>1</sup> Actual collection costs are established by OSBM and State Agencies. See Appendix A for collection costs by agency.

### **Where Does the Money Come From?**

For 2008-09, the CPFF received revenue from the following sources:

#### **Fines & Forfeitures Collections – FY 2008-09**

Department of Revenue	\$85,641,974
Department of Transportation	\$21,042,227
Department of Justice	\$6,656,123
Employment Security Commission	\$3,978,292
University of North Carolina	\$3,844,394
Department of Env. and Nat. Resources	\$2,831,107
Department of Labor	\$2,325,206
Department of Commerce	\$1,915,485
Department of Insurance	\$1,863,947
<u>Other Agencies</u>	<u>\$1,620,311</u>
<b>TOTAL</b>	<b>\$131,719,065</b>

A more detailed breakdown of agency collections can be found in Appendix B

### **Where Does the Money Get Appropriated To?**

For 2009-11 biennium, the General Assembly appropriated moneys from CPFF to the following sources:

#### **Fines & Forfeitures Appropriations**

**S.L. 2009-451, Sect. 5.1.(a)**

	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>
School Technology Fund	\$36,183,251	\$18,000,000
<u>State Public School Fund</u>	<u>\$120,362,790</u>	<u>\$120,362,790</u>
<b>TOTAL</b>	<b>\$156,546,041</b>	<b>\$138,362,790</b>

The General Assembly budgeted an additional \$6.3 million in collections for each of the 2009-10 and 2010-11 school years, as compared to the FY 2008-09 budgeted appropriations. The General Assembly regularly makes such adjustments based on the historic pattern of increased collections.

The General Assembly also required the University of North Carolina (UNC) to remit \$18,183,251 of parking fines held in escrow to the CPFF for appropriation in FY 2009-10. The General Assembly appropriated this one-time money to the LEAs through the School Technology Fund. UNC had been holding these parking fines in escrow in response to the outstanding civil penalties litigation.

Appendix C shows the appropriation of these moneys by LEA.

### **Major Legislative Action**

The 1997 Appropriations Act (S.L. 1997-443) created the CPFF to be administered by OSBM, and codified how funds are to be distributed to LEAs (see “Legal Origins” section above).

The 2005 Appropriations Act (S.L. 2005-276) established that funds in the CPFF shall be appropriated to the State Public School Fund for allotment by the State Board of Education on a per student basis. Prior to this change, all money in the CPFF was allotted to LEAs through the State School Technology Fund.

In addition to distributing the parking fines held at UNC, the 2009 Appropriations Act (S.L. 2009-451) allowed the State Board of Education to use up to \$6,000,000 from the School Technology appropriation to fund the North Carolina Virtual Public Schools in FY 2009-10. The State Board of Education utilized this authority. Therefore, the FY 2009-10 School Technology appropriation that was actually distributed to the LEAs totaled \$30,183,251.

### **Litigation**

In **December 1998**, the North Carolina School Boards Association and the individual Boards of Education for Wake, Durham, Johnston, Buncombe, Edgecombe, and Lenoir Counties sued defendant State departments, agencies, institutions, and licensing boards seeking a determination that fines & forfeitures collected by these defendants should go to the school systems in the counties where the payments were collected. Among the payments at issue were payments collected by the Department of Revenue for late payments of taxes, Department of Transportation payments for vehicles that exceed weight limits, parking fines collected by university campuses, and payments for failure to pay the state unauthorized substances tax. The plaintiffs believed they were owed this money based on the language in Article IX, Section 7 of the State Constitution. The State claimed that the challenged payments were remedial rather than punitive in nature and, therefore, they could be retained and used by the State for purposes other than maintaining free public schools.<sup>2</sup>

In **July 2005**, the North Carolina Supreme Court ruled that, going forward, the plaintiffs were due the funds in question. As such, the affected State agencies began transferring these collections into the CPFF beginning July 1, 2005. While it was determined that the State agencies had to make the transfers to the CPFF going forward, the North Carolina Supreme Court did not make a ruling on what to do about all of the fines & forfeiture collections between January 1, 1996, and June 30, 2005 that did *not* go to schools.<sup>3</sup> The North Carolina Supreme Court remanded the case back to the Wake County Superior court where Judge Howard Manning was assigned to preside over further proceedings.

Judge Manning issued a final decision on the case on **August 8, 2008**. Judge Manning ruled that:

- The penalties in question should have been paid into the CPFF and provided to LEAs via the School Technology Fund.
- The amounts of civil penalties collected by the affected agencies net of collection costs that should have been paid to the CPFF, but were not, are as follows:

Department of Revenue	\$583,340,162
Department of Transportation	\$104,071,323
Employment Security Commission	\$18,017,467
University of North Carolina	\$42,368,982
<u>Other Agencies</u>	<u>\$85,140</u>
<b>TOTAL</b>	<b>\$747,883,074</b>

Judge Manning further ruled that the court "has no authority to appropriate money from the State Treasury despite the constitutional violation which has occurred and been judicially determined by the Supreme Court of North Carolina...The ultimate responsibility for the satisfaction of this judgment will depend on the manner in which the General Assembly discharges its constitutional duties. Because of this constitutional separation of power, this court can do no more than enter the judgment. The remaining chapter in this case, at least at this point, is in the hands of the General Assembly."

<sup>2</sup> A civil penalty is "penal" in nature if it is intended to punish a wrongdoer. A civil penalty is "remedial" in nature if it is intended to be compensation for an injury or loss.

<sup>3</sup> Because of statute of limitations issues, the plaintiffs could only contest collections after January 1, 1996.

In **January 2009**, several LEAs filed a motion in Wake Superior court requesting the UNC System be ordered to turn over approximately \$18 million in parking fines collected and held in escrow by the UNC System since 2001. UNC had been holding these parking fines in escrow in response to the outstanding litigation. The LEAs argued that this money should be placed in the School Technology Fund.

On **March 4, 2009**, Judge Manning issued an order denying the motion filed by the School Boards Association in January. The Court reiterated its conclusion that it does not have the authority to direct the manner and means by which the August 8, 2008 judgment against the state agencies and departments in the amount of \$747,833,074 is to be satisfied or the amount of time in which it is done.

There are no additional proceedings that are known of at this time.

*For additional information, please contact:  
Kristopher Nordstrom or Martha Walston  
Fiscal Research Division  
NC General Assembly  
300 N. Salisbury St., Room 619  
Raleigh, North Carolina 27603-5925  
(919) 733-4910  
<http://www.ncleg.net/fiscalresearch>  
[kristophern@ncleg.net](mailto:kristophern@ncleg.net); [marthaw@ncleg.net](mailto:marthaw@ncleg.net)*

**Appendix A**  
**Allowable Collection Costs by Agency**

<b>Agencies, Universities, Community Colleges, Boards, &amp; Commissions</b>	<b>OSBM 2009-10 Approved Percent</b>
<b>State Agencies</b>	
Broughton Hospital	20.00%
Caswell Center	20.00%
Cherry Hospital	20.00%
Department of Agriculture and Consumer Services	15.82%
Department of Health & Human Services--Public Health	no withhold
Department of Justice	2.94%
Department of Labor, Budget and Management Division	7.71%
Department of Revenue	0.46%
Department of the Secretary of State--Charitable Solicitation Licensing Division	20.00%
Department of the Secretary of State--Lobbying Compliance Division	20.00%
Department of Transportation	3.64%
NC Department of Environment and Natural Resources	20.00%
<b>Universities</b>	
Appalachian State University	18.06%
East Carolina University	20.00%
Elizabeth City State University	14.48%
Fayetteville State University	20.00%
NC A&T State University	20.00%
North Carolina Central University	20.00%
North Carolina School of the Arts Police Department	20.00%
North Carolina State University--Cashier's Office	20.00%
North Carolina State University--Transportation Department	20.00%
UNC Asheville	20.00%
UNC Chapel Hill, Public Safety	20.00%
UNC Charlotte	20.00%
UNC Greensboro	20.00%
UNC Pembroke	20.00%
UNC Western Carolina University	20.00%
UNC Wilmington	18.61%
Winston Salem State University	20.00%
<b>Community Colleges</b>	
Guilford Tech CC	20.00%
<b>Boards &amp; Commissions</b>	
Industrial Commission--Commerce	16.82%
NC Office of the Commissioner of Banks-Banking Commission	20.00%
NC Board of Cosmetic Art Examiners	20.00%
NC State Board of Opticians	20.00%
NC Board of Massage and Body Therapy	20.00%
NC Board of Occupational Therapy	20.00%
NC Respiratory Care Board	18.23%
NC State Board of Elections	no withhold
NC Board of Ethics	no withhold
NC Board of Podiatry Examiners	20.00%
NC Board of Examiners of Electrical Licenses	19.00%

**Appendix B**

**Fines & Forfeitures Collections – FY 2008-09**

	<b><u>FY 2008-09</u></b>
Department of Revenue	\$85,641,974
Department of Transportation	\$21,042,227
Department of Justice	\$6,656,123
Employment Security Commission	\$3,978,292
University of North Carolina	\$3,844,394
Department of Env. and Nat. Resources	\$2,831,107
Department of Labor	\$2,325,206
Department of Commerce	\$1,915,485
Department of Insurance	\$1,863,947
DHHS	\$452,337
Miscellaneous	\$370,726
Department of Agriculture	\$325,202
State Board of Cosmetic Arts	\$167,982
Secretary of State	\$147,830
Department of Public Instruction	\$101,890
Board of Elections	\$42,789
Department of Administration	\$7,326
State Board of Opticians	\$3,400
<u>Office of State Controller</u>	<u>\$830</u>
<b>TOTAL</b>	<b>\$131,719,065</b>

### Appendix C

#### CPFF Appropriations by LEA – FY 2009-10

LEA	FY 09-10 Allotted ADM	Fines & Forfeitures Allotted via School Technology Fund	Fines & Forfeitures Allotted via State Public School Fund
Alamance County	22,384	461,227	1,839,252
Alexander County	5,585	115,080	458,909
Alleghany County	1,542	31,773	126,703
Anson County	3,908	80,525	321,113
Ashe County	3,214	66,225	264,088
Avery County	2,228	45,908	183,071
Beaufort County	7,183	148,007	590,214
Bertie County	2,920	60,167	239,931
Bladen County	5,137	105,849	422,098
Brunswick County	11,779	242,709	967,859
Buncombe County	25,613	527,762	2,104,573
Asheville City	3,695	76,136	303,611
Burke County	13,850	285,382	1,138,029
Cabarrus County	28,127	579,563	2,311,144
Kannapolis City	5,193	107,003	426,699
Caldwell County	13,012	268,115	1,069,172
Camden County	1,901	39,171	156,202
Carteret County	8,244	169,869	677,394
Caswell County	3,128	64,453	257,022
Catawba County	17,354	357,583	1,425,946
Hickory City	4,447	91,631	365,402
Newton-Conover City	2,841	58,539	233,440
Chatham County	7,691	158,475	631,955
Cherokee County	3,547	73,087	291,450
Chowan County	2,385	49,143	195,971
Clay County	1,423	29,321	116,925
Cleveland County	16,411	338,152	1,348,462
Columbus County	6,807	140,260	559,319
Whiteville City	2,457	50,627	201,887
Craven County	14,580	300,424	1,198,012
Cumberland County	53,264	1,097,517	4,376,605
Currituck County	4,028	82,998	330,973
Dare County	4,901	100,986	402,706
Davidson County	20,557	423,582	1,689,131
Lexington City	3,044	62,722	250,120
Thomasville City	2,558	52,708	210,186
Davie County	6,586	135,706	541,159
Duplin County	8,786	181,038	721,929
Durham County	31,867	656,627	2,618,453

**Appendix C (cont.)**

**CPFF Appropriations by LEA – FY 2009-10**

LEA	LEA Allotted ADM	Fines & Forfeitures Allotted via School Technology Fund	Fines & Forfeitures Allotted via State Public School Fund
Edgecombe County	7,239	149,161	594,815
Forsyth County	51,526	1,061,705	4,233,796
Franklin County	8,467	174,464	695,718
Gaston County	32,169	662,850	2,643,267
Gates County	1,916	39,480	157,434
Graham County	1,170	24,108	96,137
Granville County	8,769	180,687	720,533
Greene County	3,340	68,821	274,442
Guilford County	71,079	1,464,599	5,840,430
Halifax County	4,279	88,170	351,598
Roanoke Rapids City	2,930	60,373	240,753
Weldon City	963	19,843	79,128
Harnett County	18,889	389,212	1,552,074
Haywood County	7,820	161,133	642,555
Henderson County	13,367	275,430	1,098,342
Hertford County	3,173	65,380	260,720
Hoke County	7,807	160,865	641,487
Hyde County	626	12,899	51,437
Iredell County	20,990	432,504	1,724,710
Mooresville City	5,422	111,722	445,516
Jackson County	3,646	75,127	299,585
Johnston County	32,063	660,665	2,634,558
Jones County	1,200	24,726	98,602
Lee County	9,656	198,964	793,416
Lenoir County Public	9,310	191,835	764,986
Lincoln County	11,984	246,933	984,703
Macon County	4,386	90,375	360,390
Madison County	2,627	54,130	215,856
Martin County	3,906	80,484	320,949
McDowell County	6,451	132,924	530,067
Mecklenburg County	134,121	2,763,594	11,020,475
Mitchell County	2,157	44,445	177,237
Montgomery County	4,342	89,468	356,774
Moore County	12,276	252,950	1,008,696
Nash County	17,462	359,808	1,434,820
New Hanover County	24,070	495,968	1,977,788
Northampton County	2,562	52,791	210,515
Onslow County	23,641	487,128	1,942,537

**Appendix C (cont.)**

**CPFF Appropriations by LEA – FY 2009-10**

LEA	LEA Allotted ADM	Fines & Forfeitures Allotted via School Technology Fund	Fines & Forfeitures Allotted via State Public School Fund
Orange County	7,007	144,381	575,752
Chapel Hill-Carrboro C	11,740	241,905	964,654
Pamlico County	1,450	29,878	119,144
Pasquotank County	6,087	125,424	500,158
Pender County	8,206	169,087	674,272
Perquimans County	1,734	35,729	142,480
Person County	5,287	108,940	434,423
Pitt County	23,233	478,721	1,909,013
Polk County	2,456	50,606	201,805
Randolph County	18,650	384,288	1,532,436
Asheboro City	4,588	94,537	376,987
Richmond County	7,795	160,618	640,501
Robeson County	23,399	482,142	1,922,653
Rockingham County	13,994	288,350	1,149,861
Rowan County	20,655	425,601	1,697,183
Rutherford County	9,379	193,256	770,655
Sampson County	8,502	175,186	698,594
Clinton City	3,103	63,938	254,968
Scotland County	6,624	136,489	544,282
Stanly County	9,336	192,370	767,122
Stokes County	7,136	147,039	586,352
Surry County	8,659	178,421	711,494
Elkin City	1,209	24,912	99,341
Mount Airy City	1,617	33,319	132,866
Swain County	1,938	39,933	159,242
Transylvania County	3,735	76,961	306,898
Tyrrell County	592	12,198	48,644
Union County	39,200	807,725	3,220,992
Vance County	7,460	153,715	612,974
Wake County	141,194	2,909,335	11,601,651
Warren County	2,604	53,656	213,966
Washington County	1,962	40,427	161,214
Watauga County	4,430	91,281	364,005
Wayne County	19,196	395,538	1,577,300
Wilkes County	9,802	201,972	805,412
Wilson County	12,427	256,061	1,021,104
Yadkin County	5,977	123,157	491,119
Yancey County	2,451	50,503	201,394
Charter Schools	38,043	783,881	3,125,923
<b>Totals</b>	<b>1,464,835</b>	<b>30,183,251</b>	<b>120,362,790</b>