

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5301 PCB JUAS 13-02 Clerks of Court

SPONSOR(S): Justice Appropriations Subcommittee, McBurney

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	12 Y, 0 N	Toms	Jones Darity
1) Appropriations Committee		Toms	Leznoff

SUMMARY ANALYSIS

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Clerks of Court Operations Corporation (Corporation), the Legislature passed SB 2108 (Chapter 2009-06, Laws of Florida) during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these entities, most notably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act (GAA).

The bill makes conforming changes to the proposed House of Representatives Fiscal Year 2013-14 General Appropriations Act by making substantial changes to the clerks of court and the Corporation funding and operations. The bill primarily removes the clerks of court and the Corporation from the state budget while restoring some budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-06, Laws of Florida. The bill expands the role of the Legislative Budget Commission (LBC) by creating oversight and accountability in the clerks' budget process.

Under current law, the Clerks of Court Trust Fund (COCTF) is assessed an eight percent general revenue service charge each fiscal year, however, the trust fund has not been able to pay the service charge in full since coming into the legislative budget process. This bill will cause a loss to the General Revenue Fund due to the non-assessment of the eight percent general revenue service charge. This equates to a \$33.8 million loss according to the February 2013 General Revenue Estimating Conference. The bill also redirects certain filing fees from the General Revenue Fund to the COCTF.

Since the inception of the clerks being in the GAA, \$145.4 million of state funds have been appropriated to the clerks of court and the House proposed 2013-14 GAA appropriates \$16.6 million in nonrecurring general revenue to fund the clerk's current year deficit and GR service charge. Also, there is currently \$25 million of recurring general revenue in the clerks' budget.

The net fiscal impact of this bill is estimated to be approximately \$445 million in reduced trust fund appropriations and a recurring net \$55.5 million negative impact to general as reflected in the proposed House of Representatives Fiscal Year 2013-14 General Appropriations Act.

This bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Revision 7 to Article V Overview

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”¹

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.² Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Article V, section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for . . . the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

Clerks’ Court-Related Functions

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;

¹ Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

² *Id.* at 2.

- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.³

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.⁴

Post- Article V: 2004-2008

This section describes the law relating to the clerks of court after legislation was passed to implement the changes to Article V and prior to the 2009 legislation.

Budget Procedure for the Court-Related Functions of the Clerk of the Court

On or before August 15 of each fiscal year, each county clerk prepared a proposed budget which was submitted to the Florida Clerks of Court Corporation. The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.⁵ Upon review and certification of the individual clerk of court budgets by the Clerks of Court Operations Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If the Corporation verified that the proposed budget was limited and a revenue deficit projected, a clerk was to increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law to resolve the deficit. If the clerk raised fees, services charges, and any other court-related clerk fees to the maximum amounts but still had a deficit, the Corporation would notify the Department of Revenue that the clerk was authorized to retain revenues in an amount necessary to fully fund the projected deficit. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.⁶

Prior to the passage of SB 2108 in the 2009 Legislative Session, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.⁷ The Department of Revenue would then transfer those funds in the Clerks of the Court Trust Fund not needed to resolve clerk deficits to the General Revenue Fund.

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³ Section 28.35(3)(a), F.S.

⁴ Section 28.35(3)(b), F.S.

⁵ Section 28.36(3), F.S. (2008).

⁶ Section 28.36(4), F.S. (2008).

⁷ Section 28.37(2), F.S. (2008).

The Corporation had responsibility for the certification of the clerks' budget. Specific tasks included:

- Calculating the maximum authorized annual budget;
- Identifying those proposed budgets exceeding the maximum annual budget for the standard list of court-related functions;
- Identifying those proposed budgets containing funding for items not included on the standard list of court-related functions; and
- Identifying those clerks projected to have court-related revenue insufficient to fund their anticipated court-related expenditures.⁸

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.

Legislative Budget Commission

The Legislative Budget Commission (LBC)⁹ had authority to approve increases to the maximum annual budgets approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.¹⁰

Chapter 2009-204, Laws of Florida

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Corporation, the Legislature passed SB 2108 during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state full-time equivalents.

Chapter 2009-204, Laws of Florida, provides that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).¹¹ The clerk is, however, allowed to deposit 10 percent of all court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.¹²

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⁸ See s. 28.35(1)(f), F.S. (2008).

⁹ The Legislative Budget Commission is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House. The Commission, among other things, approves budget amendments during the interim between sessions. *See generally* Section 11.90, F.S.

¹⁰ See s. 28.36(6), F.S. (2008).

¹¹ Section 28.37(2), F.S.

¹² *Id.*

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.¹³ The Corporation is administratively housed within the Justice Administrative Commission and its employees are considered state employees. The Corporation is not subject to control, supervision, or direction by the JAC in the performance of its duties, but the employees of the Corporation are governed by the classification plan and salary and benefits plan of the JAC. All clerks of the circuit court are members of the Corporation and hold their position and authority in an ex officio capacity.¹⁴ The Corporation's functions include:

- Developing and certifying a uniform system of performance measures and applicable performance standards and the service unit cost;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards;
- Notifying the Legislature and the Supreme Court of any clerk not meeting performance standards and provide a copy of any correction action plan;
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions;
- Developing the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Reviewing proposed budgets submitted by the clerks of the court.¹⁵

The Corporation prepares a legislative budget request for the resources necessary to perform its duties and submits the request pursuant to chapter 216, funded as a budget entity in the General Appropriations Act.¹⁶

Budget procedure

Subsequent to the statutory changes made in 2009, by October 1 of each fiscal year, each county clerk prepares a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first three quarters of the next county fiscal year (October 1 – June 30) and submits it to the Corporation and provides a copy of the budget request to the Supreme Court.¹⁷

Each clerk is required to submit in his or her budget request the number of personnel and the proposed budget for each of the following core services:¹⁸

1. Circuit criminal;
2. County criminal;
3. Juvenile delinquency;
4. Criminal traffic;
5. Circuit civil;
6. County civil;
7. Civil traffic;
8. Probate;
9. Family; and
10. Juvenile dependency.

The budget request must identify the service units to be provided within each core service and must propose a unit cost for each service unit.¹⁹

¹³ Section 28.35(1)(c), F.S.

¹⁴ Section 28.35(1)(a), F.S.

¹⁵ Section 28.35(2), F.S.

¹⁶ Section 28.35(4), F.S.

¹⁷ Section 28.36(1), F.S.

¹⁸ The core services listed in statute were changed during the 2010 session. (ch. 2010-162, s. 14) Prior to this change, the following core services were listed: case processing; financial processing; jury management; information and reporting.

¹⁹ Section 28.36(4) and (5), F.S.

The Corporation is required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs are higher than a clerk's peers, the clerk must justify the increased costs. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. If the Corporation finds that the increased costs are not justified, the Corporation reduces the unit cost to the average of its peers.²⁰ The Corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. The Chief Financial Officer (CFO) is required to review unit costs proposed by the Corporation and makes recommendations to the Legislature and if necessary, may conduct an audit of a clerk or the Corporation.²¹ The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.²² The CFO has not made any recommendations concerning the review of the proposed unit costs since this provision was put into law.

In the 2010 session, legislation was passed which adjusted the way that the clerk's budget was released. Beginning in the 2010-2011 fiscal year, the corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund are insufficient to provide a release in a quarter in a single release, the corporation may release partial amounts for that quarter so long as the total of those partial amounts does not exceed that quarter's release. If funds in the Clerks of Court Trust Fund are insufficient for the first quarter release, the corporation may make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases shall be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act²³.

The corporation is required to estimate the fourth quarter's number of units to be performed by each clerk. The amount of the fourth-quarter release is to be adjusted downward if the clerk has performed fewer service units in the first three quarters of the year compared to three quarters of the estimated number of service units in the General Appropriations Act.

Effect of proposed changes

Generally, this bill reverses many of the changes made in SB 2108 during the 2009 legislative session relating to the budgets of the clerks of court, but expands the role of the LBC by creating oversight and accountability in the clerks' budget process. Specifically, the bill:

- Transfers the Clerks of the Court Trust Fund to the Department of Revenue, and transfers fund balances.
- Redirects Circuit Other, Circuit Foreclosure, and County Civil filing fees from General Revenue to the COCTF.
- Redirects the current \$5.00 split of the filing fee collected for trial and appellate proceedings, \$1 to the Department of Financial Services for performing clerk audits and the \$4 to the Corporation for operations funding.
- Removes the provisions describing the Corporation as a "state agency" or "agency".
- Removes the provisions that administratively housed the Corporation within the Justice Administrative Commission and their staff as state employees.
- Provides that each month the clerk shall submit a portion of filing fees collected in the prior month that is in excess of one-twelfth of the clerk's total budget to DOR for deposit into the department's Clerks of the Court Trust Fund.
- Changes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Provides for the deposit of excess revenue over the amount needed to meet the authorized budget amounts to be transferred from the Department of Revenue to the General Revenue

²⁰ Section 28.36(6), F.S.

²¹ Section 28.36(8), F.S.

²² Section 28.36(9), F.S.

²³ Section 28.36(10), F.S.

Fund each January, unless the official estimate for funds accruing to the COCTF made by the Revenue Estimating Conference for the current fiscal year or the next fiscal year included in the estimate is less than the cumulative amount of authorized budgets from the COCTF for the current fiscal year.

- Requires the clerks of court to submit annual budget requests to the Corporation.
- Requires the Corporation to submit their annual budget requests and each of the clerks' annual budget requests to the Legislative Budget Commission.
- Authorizes the LBC to review, approve, disapprove or amend and approve both the Corporations' and the clerks of court budgets by October 1 of each year.
- Defines workload measures and workload performance standards.
- Requires the Corporation to contract with DFS for audits of court-related budgets of individual clerks.
- Requires the Corporation to base its revenue estimates on the official Revenue Estimating Conference estimate.
- Outlines the budget procedures for calculating the clerks' budget, and the mechanism for counties with projected revenue deficits to request for additional funds from the COCTF.
- Removes the provisions requiring the clerks to submit a budget based on core services and unit costs.
- Removes the provisions requiring the Corporation to develop performance measures and standards in consultation with the Supreme Court.
- Requires the clerks of court and the Corporation to adhere to the procurement provisions of chapter 287, F.S.
- Provides an authorized budget amount for the clerks and the Corporation for the period beginning July 1, 2013 and ending September 30, 2013.
- Provides an authorized budget amount for the clerks and the Corporation for the county fiscal year beginning October 1, 2013 and ending September 30, 2014.

B. SECTION DIRECTORY:

Section 1. Transfers balances from the Clerks of the Court Trust Fund in the Justice Administrative Commission to the Department of Revenue.

Section 2. Amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 3. Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 4. Repeals s. 28.2455, F.S.

Section 5. Amends s. 28.246, F.S., relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments and distribution of funds.

Section 6. Amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 7. Amends s. 28.36, F.S., relating to budget procedures for the court-related functions of the clerks of the court.

Section 8. Creates s. 28.365, F.S., relating to procurement requirements.

Section 9. Amends s. 28.37, F.S., relating to fines, fees, service charges and costs remitted to the state.

Section 10. Amends s. 34.041, F.S., relating to filing fees.

Section 11. Amends s. 43.16, F.S., relating to the Justice Administrative Commission.

Section 12. Amends s. 110.205, F.S., relating to career service and exemptions.

Section 13. Amends s. 142.01, F.S., relating to fine and forfeiture funds; disposition of revenue and clerk of the circuit court.

Section 14. Amends s. 213,131, F.S., relating to the Clerks of the Court Trust Fund.

Section 15. Amends s. 215.22, F.S., relating to certain income and certain trust funds exempt.

Section 16. Amends s. 216.011, F.S., relating to definitions.

Section 17. Provides for an authorized budget for the Clerks of the Court and the Florida Clerks of Court Operations Corporation.

Section 18. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will have a recurring net \$55.5 million negative impact to general revenue. However, the state will no longer bear the responsibility of addressing routine operating deficits of the Clerk of Court Trust Fund. Since the inception of the clerks being in the 2009-10 GAA, \$145.4 million of state funds have been appropriated to the clerks of court and the House proposed 2013-14 GAA appropriates \$16.6 million in nonrecurring general revenue to fund the clerk's current year deficit and GR service charge.

The 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue service charge for Fiscal Year 2009-10. The 2011 Legislature appropriated \$44.2 million in nonrecurring general revenue to pay the GR service charge and to cover the COCTF deficit for FY 2010-11. The 2012 Legislature appropriated \$57.6 million in nonrecurring general revenue in the 2012-13 GAA to cover the COCTF deficit and to pay the GR service charge. The 2012 Legislature also appropriated \$25 million in recurring general revenue to offset a projected COCTF deficit, however, the clerks of court are still projecting a current year deficit.

The bill removes the funding for the clerks of court and Clerks of Court Operations Corporation from the General Appropriations Act and redirects all revenue from the Clerks of Court Trust Fund in the Justice

Administrative Commission to the Department of Revenue. Removing these entities from the budget reduces state trust fund expenditures by \$445 million. The bill exempts the COCTF from being assessed the 8% GR service charge payable to the General Revenue Fund based on the revenue collected in the trust fund. The February 2013 Article V Revenue Estimating Conference projected the trust fund will generate approximately \$423.1 million in revenue for Fiscal Year 2012-2013 and \$422.3 for Fiscal Year 2013-14. The loss of the general revenue service charge is estimated to be \$33.8 million.

The bill redirects \$80 of Circuit Other, Circuit Foreclosure, and County Civil filing fees from General Revenue to the COCTF and this is estimated to generate \$80.5 million in revenue. Based on the redirect of filing fees, it is projected that the clerks will be adequately funded to carry out their duties as required by law.

The bill outlines the process for calculating the clerks' budget, collecting revenue and submitting these funds to the Department of Revenue after expenditures have been satisfied. The remaining funds are then transferred from the Clerks of Court Trust Fund to the General Revenue Fund.

Fiscal Year	GR Service Charge Assessed	GR Service Charge paid by clerks	Clerks Operating Deficit	Amount of deficit paid with state funds and funding source revenue	
2009-10	\$26.8	\$8.2		\$18.6	State Courts Revenue TF
2010-11	\$35.9		\$8.3	\$44.2	Non-recurring General Revenue
2011-12	\$32.9		\$25.6	\$57.6	Non-recurring General Revenue
2012-13	\$33.8		\$20.5	\$25.0	Recurring General Revenue
Proposed 2013-14 GAA				\$16.6	Non-recurring General Revenue
				\$162.0	Total paid by State Funds

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES