

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: SPB 7120

INTRODUCER: For consideration by the Budget Committee

SUBJECT: State Judicial System

DATE: March 29, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Meyer, C.		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill makes conforming changes to the Florida Statutes necessary to implement the proposed Senate budget in the criminal and civil justice area. The bill contains provisions to create the Judicial Caseload Incentive Plan to resolve certain civil disputes in a timely manner by setting performance goals and making nonrecurring financial awards to judges. The bill authorizes a Direct Service Organization for the regional conflict counsels to allow them to raise private funds to support the work of the offices. The bill provides that the Office of State Court Administrator will pay court appointed counsel attorney fees when the court orders payments above the rate set in law. The bill contains provisions to redirect a portion of fine revenues from the Public Records Modernization Trust Fund to the Clerks of Court Trust Fund. The bill requires the Clerks of Court Operations Corporation to collect existing clerk of court reports on county use of fees to support court facilities and submit them to the chief judge, the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill has an effective date of July 1, 2011. The bill is expected to have a positive fiscal impact to the state. Provisions to create the Judicial Caseload Incentive Plan are dependent on appropriations and could reduce costs to the state court system if cases are processed in a more timely manner. Provisions to require the Office of State Court Administrator to pay court appointed counsel attorney fees when the court orders payments above the rate set in law are expected to reduce costs to the state.

This bill substantially amends the following sections of the Florida Statutes: 27.511, 27.5304, 28.37, and 318.18.

II. Present Situation:

State Judicial System

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. Under Revision 7 to Article V, the counties continue to fund the cost of facilities, security, and communications, including information technology for the trial courts, state attorneys, and public defenders. The state pays for the due process costs of these entities, including the cost of court appointed counsel for certain persons in criminal and civil matters. Funds for due process costs are appropriated to the Justice Administrative Commission, the agency that administratively houses state attorneys, public defenders, and other court-related entities.

Funding for judges and support staff have remained a state responsibility. Trial courts hear criminal and civil cases at the county and circuit level. When civil disputes take significant judicial time to resolve, the state's costs, as well as those of private litigants, increase. Chief judges in each circuit use a variety of ways to manage the caseload. Currently, judges are compensated at a level specified in law regardless of how long cases take to dispose.

To assist the counties in funding the cost of one of their remaining responsibilities, court facilities, the legislature authorized an additional surcharge on traffic infractions to be retained locally. The individual clerks of court provide a quarterly report to the chief judge, the Governor, the President of the Senate, and the Speaker of the House of Representatives on these revenues and expenditures.

Clerk of Court Funding

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings. The legislature set the amount of some service charges, court costs, and filing fees. In other cases, the legislature set a cap on the amounts. Except for certain specified local and state uses, the vast majority of service charges, court costs, filing fees, and fines support the budgets of the clerks and the state courts. Current law allows the clerk of court to retain ten percent of all fines collected to be used to support their court related functions. These funds are deposited in the clerk's Public Records Modernization Trust Fund. This trust fund is retained locally and the state is not allowed to appropriate these funds. The amount of fines deposited into the Public Records Modernization Trust Fund is unknown, but was estimated to be approximately \$26 million after legislation was passed in 2009 to authorize the retention of these revenues locally. The remaining revenues derived from service charges, court costs, filing fees, and fines are deposited in the Clerks of Court Trust Fund to be used to fund the clerks offices in the General Appropriations Act. The Revenue Estimating Conference on February 14, 2011 for Article V Fees and Transfers estimated that \$470.9 million in revenues would be deposited into the Clerks of Court Trust Fund in the fiscal year 2011-12. After paying the statutorily required service charge to the General Revenue Fund, \$433.9 million would be available in the Clerks of Court Trust Fund to fund the court related operations of the clerks. The appropriation for the clerks in the proposed Senate budget for fiscal year 2011-12 is \$445

million. The estimated revenue available in the Clerks of Court Trust Fund is insufficient to support the appropriation to the clerks in the proposed Senate budget.

Criminal and Civil Conflict Regional Counsels (Regional Conflict Counsels)

The 2007 legislature created five regional conflict counsels to take criminal cases that the public defender could not take due to ethical conflicts and certain other civil cases for persons entitled to representation by law. Civil cases include providing legal representation to indigent parents in dependency and termination of parental rights.

A direct-support organization (DSO) is typically created as a not-for-profit corporation to give a governmental entity or program the flexibility to seek an additional funding source. Numerous DSOs are provided for in statute.

Payment of Court Appointed Counsel

Prior to July 1, 2007, all criminal conflict cases and certain civil cases were handled exclusively by private, court appointed counsel. While the legislature created the regional conflict counsels to take most of these cases, if the regional conflict counsels have an ethical conflict, the case must be handled by private, court appointed attorneys. The chief judge in each circuit maintains a registry of qualified attorneys and these attorneys sign a contract with the Justice Administrative Commission (JAC) to receive payment based on a flat fee. If a court finds that the case warrants a fee in excess of the flat fee, the court may double the amount. If that is still not sufficient, the court may order the JAC to pay the attorney an hourly amount. The number of times the court orders payments above the cap have increased over time. In fiscal year 2008-2009, the court ordered payments over the flat fee in 161 cases for an additional cost of \$940,263. In fiscal year 2009-2010, the court ordered such payments in 294 cases for an additional cost of \$2,612,618. In the first half of fiscal year 2010-2011, the court ordered payments over the flat fee in 208 cases for an additional cost of \$2,079,141. These costs are paid from the Criminal Conflict Appropriation Category. The costs of criminal conflict counsel, including court ordered payments above the flat fee, have exceeded original appropriations in the last several years. To resolve these projected deficits, the legislature has had to transfer funds from other due process categories in the Justice Administrative Commission and make supplemental appropriations from unallocated general revenue. The proposed Senate budget increases funding for this function by approximately \$17 million for fiscal year 2011-2012.

III. Effect of Proposed Changes:

Section 1 creates the Judicial Caseload Incentive Plan to assist in resolving civil disputes in a timely manner and reducing legal costs. The plan allows judges that preside over civil cases to earn a nonrecurring award of \$12,000 if certain performance goals are met relating to timely disposition of cases. The annual performance goals and the specific case types are stated in the General Appropriations Act each year. The Office of State Courts Administrator tracks performance on a quarterly basis and makes quarterly payments of the award to judges presiding over certain case types when quarterly performance goals are met. Funds are to be appropriated in the General Appropriations Act for this purpose.

Section 2 amends s. 27.511, F.S., to authorize the five regional conflict counsels to create and contract with a not-for-profit direct-support organization (DSO) to conduct programs and activities, raise funds, and make expenditures for the benefit of the office. The bill specifies that any moneys acquired by the DSO may be held in a separate depository account in the name of the organization and subject to a contract with the office. The DSO must also provide for an annual financial audit.

Section 3 amends s. 27.5304, F.S., to require the Office of State Courts Administrator to pay court appointed counsel fees when the court orders payment above the flat fees set in the Florida Statutes and the General Appropriations Act. Under the bill, the Justice Administrative Commission would pay the flat fee and the Office of State Courts Administrator would pay the amount ordered by the court to be paid in addition to the flat fee.

Section 4 amends s. 28.37, F.S., to delete provisions allowing the clerk of court to retain ten percent of all fines collected locally in the Public Records Modernization Trust Fund to support court related functions. The bill redirects these revenues to the Clerks of Court Trust Fund in order to fully fund the clerks at the amount proposed in the proposed Senate budget.

Section 5 amends s. 318.18, F.S., to require the Clerk of Court Operations Corporation to collect a quarterly report from the clerks of court on a local surcharge on traffic infractions. This surcharge helps counties fund their responsibility to provide court facilities. The corporation will collect and submit the reports in an electronic format to the chief judge, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 6 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private litigants may see their legal costs decrease if the court processes cases in a more timely manner. Private individuals will be able to make charitable donations to the regional conflict counsel offices.

C. Government Sector Impact:

The bill is expected to have a positive fiscal impact to the state. Provisions to create the Judicial Caseload Incentive Plan are dependent on appropriations and could reduce costs to the state court system if cases are processed in a more timely manner. Provisions to require the Office of State Court Administrator to pay court appointed counsel attorney fees when the court orders payments above the rate set in law are expected to reduce costs to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.