

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5405 PCB JUAS 12-03 Clerks of the Court

**SPONSOR(S):** Justice Appropriations Subcommittee, Glorioso

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	9 Y, 3 N	Toms	Jones Darity
1) Appropriations Committee	17 Y, 5 N	Toms	Leznoff

### SUMMARY ANALYSIS

The bill makes conforming changes to the proposed House of Representatives Fiscal Year 2012-13 General Appropriations Act by making substantial changes to the clerks of court and Clerks of Court Operations Corporation (Corporation) funding and operations. The bill primarily removes the clerks of court and the Corporation from the state budget and while restoring most budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-006, Laws of Florida, it expands the role of the Legislative Budget Commission (LBC) in the clerks' budget process.

The net fiscal impact of this bill is estimated to be approximately \$446.7 million in reduced trust fund appropriations as reflected in the proposed House of Representatives FY 2012-13 General Appropriations Act.

There will be a loss to the General Revenue Fund due to the non assessment of the eight percent general revenue charge. This equates to a \$33 million loss according to the January 2012 General Revenue Estimating Conference. However, funds in excess of the amount needed for the clerks operation will be remitted to general revenue as a function of the bill. The net of the two fiscal effects has not yet been determined by the impact conference.

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 charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

Since the inception of the clerks being in the GAA \$62.8 million of state funds have been appropriated to offset the assessment of the GR service charge and the clerk's deficit. The House proposed 2012-13 GAA appropriates \$58.5 million in General Revenue to fund the clerk's current year deficit and GR service charge.

# 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.”<sup>1</sup>

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.<sup>2</sup> 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;

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<sup>1</sup> 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).

<sup>2</sup> *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.<sup>3</sup>

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.<sup>4</sup>

### **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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.

#### *Florida Clerks of Court Operations Corporation*

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<sup>3</sup> Section 28.35(3)(a), F.S.

<sup>4</sup> Section 28.35(3)(b), F.S.

<sup>5</sup> Section 28.36(3), F.S. (2008).

<sup>6</sup> Section 28.36(4), F.S. (2008).

<sup>7</sup> 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 budget 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.<sup>8</sup>

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)<sup>9</sup> 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.<sup>10</sup>

### **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).<sup>11</sup> 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.<sup>12</sup>

#### *Florida Clerks of Court Operations Corporation*

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<sup>8</sup> See s. 28.35(1)(f), F.S. (2008).

<sup>9</sup> 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.

<sup>10</sup> See s. 28.36(6), F.S. (2008).

<sup>11</sup> Section 28.37(2), F.S.

<sup>12</sup> *Id.*

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.<sup>13</sup> 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.<sup>14</sup> 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;
- Notify 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;
- Develop the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Review proposed budgets submitted by the clerks of the court.<sup>15</sup>

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.<sup>16</sup>

#### *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.<sup>17</sup>

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:<sup>18</sup>

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.<sup>19</sup>

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<sup>13</sup> Section 28.35(1)(c), F.S.

<sup>14</sup> Section 28.35(1)(a), F.S.

<sup>15</sup> Section 28.35(2), F.S.

<sup>16</sup> Section 28.35(4), F.S.

<sup>17</sup> Section 28.36(1), F.S.

<sup>18</sup> 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.

<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.<sup>22</sup>

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 Act<sup>23</sup>.

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 in the clerks' budgeting process. Specifically, the bill:

- Removes the funding for the clerks of court and the Corporation from the General Appropriations Act.
- 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 all filing fees should be retained as fee income for the clerks.
- Provides that one-third of filing fees collected each month be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund, unless the remaining two-thirds are less than one-twelfth of the clerk's total budget.
- Transfers the Clerks of the Court Trust Fund to the Department of Revenue, and transfers fund balances.
- Deletes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Requires the clerks of court to remit funds in excess of approved budget to the Department of Revenue for deposit in the Department of Revenue Clerks of Court Trust Fund.
- Provides for the deposit of excess revenue over the amount needed to meet the approved budget amounts to be transferred from the Department of Revenue to the General Revenue Fund.
- Requires the clerks of court and the Corporation to submit annual budget requests to the LBC.

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<sup>20</sup> Section 28.36(6), F.S.

<sup>21</sup> Section 28.36(8), F.S.

<sup>22</sup> Section 28.36(9), F.S.

<sup>23</sup> Section 28.36(10), F.S.

- Authorizes the Legislative Budget Commission to review, approve, disapprove or amend both the Corporations' and the clerks of court budgets.
- Provides an approved budget amount for the clerks to operate during the transition period (the last quarter of the county fiscal year) until the LBC meets in September.
- Provides that the clerks' budget not exceed 1 percent of the prior year's budget and provides for exceptions.
- Defines workload measures and workload performance standards.
- Removes language declaring revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs, and service charges as state funds.
- Redirects/restores the current \$5.00 split of the filing fee collected for trial and appellate proceedings (\$1.50 to the Department of Financial Services for performing clerk audits and the \$3.50 to the Corporation for operations funding) to the Department of Financial Services' Administrative Trust Fund to fund the contract with the Corporation.
- Outlines that the contract with the Chief Financial Officer will be used in determining compliance by the Corporation.
- Removes the provisions requiring the Chief Financial Officer to review and conduct audits of the clerks and the Corporation unit cost reporting.
- Outlines the budget procedures for calculating the clerks' budget, and the mechanism for counties with projected revenue deficits to request for additional funds from a surplus clerk.
- Removes the provisions requiring the Corporation to submit a legislative budget request pursuant to chapter 216, F.S.
- 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.

## 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.** Amends 28.2455, F.S, providing technical revisions.

**Section 5.** Amends s. 28.246, F.S., relating to payment of court-related fees, charges, and costs; partial payments; distribution of funds to reflect deposits in the Department of Revenue Clerks of the Court Trust Fund.

**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 budget procedures for the court-related functions.

**Section 8.** Creates s. 28.365, F.S., relating to the procurement requirements for the clerks of court.

**Section 9.** Amends s. 28.37, F.S., relating to fines, fees, services charges, and cost remitted to the state.

**Section 10.** Amends s.28.43, F.S., authorizing the Department of Revenue to adopt rules.

**Section 11.** Amends s. 34.041, F.S., relating to filing fees collected by the clerks.

**Section 12.** Amends s. 43.16, F.S., relating to the membership, powers and duties of the Justice Administrative Commission.

**Section 13.** Amends s. 110.205, F.S., relating to exemptions for career service positions.

**Section 14.** Amends s. 142.01, F.S., relating to the fine and forfeiture funds and disposition of revenue for the clerk of the circuit court.

**Section 15.** Amends s. 213.131, F.S., relating to the creation of the Clerks of the Court Trust Fund in the Department of Revenue.

**Section 16.** Amends s. 216.011, F.S., relating to definitions for the purpose defining a “state agency” or “agency”.

**Section 17.** Provides for an approved budget for the clerks of court.

**Section 18.** Provides an effective date of July 1, 2012.

## 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 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 charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

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 \$446.7 million. As a state trust fund, it is assessed an 8% service charge payable to the General Revenue Fund based on the revenue collected in the trust fund. The December 2011 Article V Revenue Estimating Conference projected the trust fund will generate

approximately \$422 million in revenue for Fiscal Year 2011-2012 and \$423.6 for Fiscal Year 2012-13. The loss of the general revenue service charge is estimated to be \$33 million.

By reverting to the former budget processes, 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 Department of Revenue Clerks of the Court Trust Fund to the General Revenue Fund. While the excess revenue to be transferred to the General Revenue Fund cannot be determined at this time (the Corporation would have to certify budgets), based on the last four years when these policies were in practice, an average of \$62 million was transferred. However, it should be noted the clerks are expecting a decline in collections.

Fiscal Year	GR service charge assessed	GR service charged paid by clerks	Clerks Operating Deficit	Amount of deficit paid with state funds and funding source	
2009-10	\$ 26.80	\$ 8.20	\$ -	\$ 18.60	State Courts Revenue TF
2010-11	\$ 35.90	\$ -	\$ 8.30	\$ 44.20	General Revenue
2011-12	\$ 32.90	\$ -	\$ 25.60	\$ 58.50	Proposed House GAA 2012-2013; Funds with General Revenue

### 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