

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1184

SPONSOR: Appropriations Subcommittee on Article V Implementation and Judiciary and Senator Villalobos

SUBJECT: Judicial Branch

DATE: April 3, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Roberts</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Martin</u>	<u>Martin</u>	<u>AAV</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill expands upon the initial framework provided in CS/SB 1212 (Chapter 2000-237, Laws of Florida) for the continued implementation of Revision 7 to the State Constitution. The elements of the state court system, the state attorneys' offices, the public defenders' offices, and court-appointed counsel to be provided from state revenues appropriated by general law are further identified and defined. In addition, the bill revises the definitions of certain items to be funded by the counties pursuant to Revision 7. A process is established for the identification and funding of local requirements of the state courts system.

Significant changes are proposed to the responsibilities of public defenders and circuit conflict committees, which are renamed as "circuit indigent representation committees," in recognition of the need for statewide uniformity and standards in providing court-appointed legal counsel in criminal and civil cases. Under the bill, circuit indigent representation committees shall be comprised of the chief judge of the judicial circuit or designee, one experienced criminal defense attorney, one experienced civil trial attorney and the public defender. Additionally, the Florida Public Defenders Association and the Office of the State Courts Administrator are charged with setting the eligibility and performance standards of court-appointed and conflict attorneys that, in turn, must be applied by every circuit indigent representation committee. The public defender is required to designate an individual to serve as the coordinator to the circuit indigent representation committee who is responsible for handling administrative matters for the committee. The Justice Administrative Commission is required to prepare and issue a quarterly state-wide report comparing actual year-to-date expenditures to budgeted amounts for the circuit indigent representation committees in each of the judicial circuits. The bill also requires the Chief Financial Officer to report to the Legislature certain county court system expenditures, and appropriates \$50,000 in General Revenue for this requirement.

This bill substantially amends the following sections of the Florida Statutes: 27.02, 27.15, 27.34, 27.3455, 27.51, 27.53, 27.54, 27.562, 27.58, 28.24, 29.001, 29.002, 29.004, 29.005, 29.006, 29.007, 29.008, 43.26, 43.35, 92.153, 925.035, 925.036, and 925.037. This bill creates section 40.001, Florida Statutes. The bill re-enacts section 943.053, Florida Statutes. This bill repeals the following sections of Florida Statutes: 27.005, 27.006, 27.385, 27.52(1) (a), 29.011, and 40.02(3).

II. Present Situation:

Article XI, section 2 of the State Constitution provides for the creation of a thirty-seven member constitution revision commission (CRC) for the purpose of reviewing Florida's Constitution and proposing changes for voter consideration. The last revision commission was appointed in 1997. When the work of the CRC was completed in May 1998, it had adopted nine proposed revisions to the State Constitution to be placed on the November ballot for consideration by the voters.

REVISION 7

Revision 7, proposed by the CRC, was adopted by the voters at the 1998 November election. The revision made several changes to Article V of the State Constitution, including extensive changes to Article V, section 14 related to funding. These changes revised the method by which the judicial system is funded by specifying the costs to be paid by the state, the counties, or by other sources. The actual text in pertinent part reads:

SECTION 14. Funding.—

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c) 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. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys offices, public defenders'

offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

Revision 7 also included an implementation schedule for the funding provisions in Article XII, section 22 which read:

SECTION 22. Schedule to Article V Amendment.--

(a) Commencing with fiscal year 2000-2001, the Legislature shall appropriate funds to pay for the salaries, costs, and expenses set forth in the amendment to Section 14 of Article V pursuant to a phase-in schedule established by general law.

(b) Unless otherwise provided herein, the amendment to Section 14 shall be fully effectuated by July 1, 2004.

To begin the implementation of Revision 7, the 2000 Legislature passed CS/SB 1212 (Chapter 2000-237, Laws of Florida). The law created Chapter 29, Florida Statutes, and provided the framework for identifying and defining the components of the state court system, the public defenders' offices, the state attorneys' offices, court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes.

The state court system is defined to include the essential elements of the Supreme Court, district courts of appeal, circuit courts, county courts, and essential supports thereto as follows:

- Judges appointed or elected under current law and essential staff, expenses, and costs as determined by general law;
- Juror compensation and expenses and reasonable juror accommodations when necessary;
- Reasonable court reporting services necessary to meet constitutional requirements;
- Auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the courts;
- Construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court;
- Foreign language interpreters and translators essential to comply with constitutional requirements; and
- Staff and expenses of the Judicial Qualifications Commission.

See ss. 29.001(1) and 29.004, F.S.

The offices of public defenders and state attorneys are defined to include the essential elements of the 20 state attorneys' offices and the essential elements of the 20 public defenders' offices as follows:

- The state attorney and public defender of each judicial circuit, assistant state attorneys and public defenders, and essential staff as determined by general law;
- Reasonable court reporting services necessary to meet constitutional requirements; and
- Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by either a state attorney or on behalf of an indigent defendant; mental health professionals who are appointed pursuant to s. 394.473, F.S. and required in a court hearing involving an indigent; and expert witnesses who are appointed pursuant to s. 916.115(2), F.S. and required in a court hearing involving an indigent.

See ss. 29.001(1), 29.005 and 29.006, F.S.

Court-appointed counsel is defined as counsel appointed to ensure due process in criminal and civil proceedings in accordance with state and federal constitutional guarantees, with the essential elements as follows:

- Private attorneys assigned by the court to handle cases where the defendant is indigent and cannot be represented by the public defender;
- Private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel in accordance with state and federal constitutional guarantees;
- Reasonable court reporting services necessary to meet constitutional requirements;
- Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned on behalf of an indigent defendant; mental health professionals who are appointed pursuant to s. 394.473, F.S. and required in a court hearing involving an indigent; and expert witnesses who are appointed pursuant to s. 916.115(2), and required in a court hearing involving an indigent; and
- Investigating and assessing the indigence of any person who seeks a waiver of court costs and fees, or any portion thereof, or applies for representation by a public defender or private attorney.

See ss. 29.001(1) and 29.007, F.S.

Section 14, Article V of the State Constitution requires the counties to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Chapter 2000-237, Laws of Florida, defined these items. *See* s. 29.008, F.S.

THE COURTS

The state currently funds all costs related to the State Supreme Court and the five District Courts of Appeal. This includes all costs for the judges, the clerk, all staff support and related expenses, as well as all facilities, equipment, furnishings and related costs such as security, maintenance and parking.

The state currently funds all judges, one judicial assistant per judge, approximately one law clerk for every three judges, administrative staff, and some program staff for the circuit and county courts. The state also appropriates the expense and other capital outlay funds related to those positions. The counties fund facilities and parking and in many cases augment the state funded personnel with county staff and associated expense and other capital outlay funding for the trial courts and specific programs within each court.

THE STATE ATTORNEYS

The state attorneys are largely funded by the state but also receive funding from the counties in accordance with Chapter 27, F.S. Section 27.33, F.S., provides that by November 15 of each year each state attorney shall provide to the Executive Office of the Governor a written estimate of the amount needed for operational expenses for the next fiscal year. This list must include salaries for the state attorney, assistant state attorneys, stenographers, and investigators, expenses for travel, office equipment, stationery, stamps, telephone and telegraph service, and the printing of necessary legal forms and other necessary expenses of the state attorney and assistants. The proposal is also to include a reserve for contingencies but is not to include any expense which the statutes require the counties to fund.

The authorization and requirements for county funding of the state attorneys' offices are generally set out in s. 27.34, F.S. Each county is to provide the state attorney with office space, utilities, telephone service, custodial services, library services, transportation services, and communication services as needed for the state attorney to carry out their duties except as otherwise provided in the General Appropriations Act. Additionally, the counties are required to fund pretrial consultation fees for expert or other potential witnesses consulted before trial, travel expenses in connection with out-of-jurisdiction depositions, out-of-state travel expenses to attempt to locate and interrogate witnesses, court reporter costs during the course of an investigation and prosecution, post indictment and post information deposition costs, cost of copying depositions of state witnesses taken by the defense. For many of these costs related to the investigation and prosecution of a criminal case, the state attorney must certify that the expenditures were useful and necessary in the prosecution and the counties may contest the reasonableness of the expenditure in the court where the criminal case is brought.

While section 27.34, F.S., prohibits counties and municipalities from appropriating or contributing funds to the operation of the state attorneys except for the items listed above they are authorized to contribute funds for one assistant state attorney or to contract with the state attorney for the prosecution of violations of special laws or ordinances of the county or municipality. The county may also provide personnel employed by the county or municipality to serve as special investigators and the county may contribute funds to pay the salary of one or

more assistant state attorneys trained in the use of the civil and criminal provisions of the Florida RICO Act.

Section 27.245, F.S. requires each county to submit a report on the revenues and expenditures related to the state attorneys. This report must include all of the expenditures by the county set out above, medical examiner services, county victim witness programs, appellate filing fees for indigent defendants, other court-related costs paid by the county pursuant to a judgment or order of the trial court, and revenue from the Local Government Criminal Justice Trust fund used to pay the costs of the state attorney.

THE PUBLIC DEFENDERS AND CONFLICT COUNSEL

The public defenders are also funded largely by the state but also receive county funding for specified activities. Section 27.53, F.S., provides the authorization and requirements for county funding of the public defenders' offices. Each county is to provide the public defender with office space, utilities, telephone services, custodial services, library services, transportation services, and communication services as needed for the public defenders to carry out their duties except as otherwise provided in the General Appropriations Act. Additionally, the counties are required to fund pretrial consultation fees for expert or other potential witnesses consulted before trial, travel expenses in connection with out-of-jurisdiction depositions, out-of-state and out-of-jurisdiction travel expenses to attempt to locate and interrogate witnesses, court reporter costs during the course of an investigation and prosecution, post indictment and post information deposition costs, and costs of copying depositions of defense witnesses taken by the prosecution. For many of these costs related to the investigation and prosecution of a criminal case the public defender must certify that the expenditures were useful and necessary in the defense of the case and the counties may contest the reasonableness of the expenditure in the court where the criminal case is brought.

While section 27.54, F.S., prohibits counties and municipalities from appropriating or contributing funds to the operation of the public defenders except as provided above, they are authorized to contribute funds for one assistant public defender for the defense of violations of special laws or ordinances of the county or municipality. The county or municipality may also provide personnel employed by the county or municipality to serve as legal and support staff when the public defender certifies that inadequate resources will result in the withdrawal from current cases or the inability to accept new appointments.

Public defenders are to represent all indigent persons charged in their circuits with felony, misdemeanor, or juvenile offenses. The public defenders also represent indigents facing involuntary hospital commitments, involuntary mental illness treatment or involuntary confinement for evaluation and treatment for being an alleged sexually violent predator. *See* 27.51, F.S. In addition, section 27.51(4), F.S., designates five public defenders to serve as appellate defenders and handle all indigent felony appeals.

Section 27.53(3), F.S., authorizes a public defender to withdraw from a case based on a conflict. "Ethical conflicts" most typically occur when the public defender is appointed to represent co-defendants whose defenses are adverse or hostile or when the public defender formerly represented a state witness or victim who will testify against the public defender's present client.

“Overload conflicts” occur when a public defender moves to withdraw because his or her office is experiencing an excessive trial or appellate workload. When a public defender files a motion to withdraw the court must review and *may* inquire or conduct a hearing into the adequacy of the public defenders representations regarding a conflict of interest. If the court grants the motion to withdraw it may appoint private counsel to act as conflict counsel. The private counsel is to be paid by the county in accordance with the compensation schedule in s. 925.036, F.S. Further, all costs related to the conflict counsel defense are paid by the county in the same manner as for the public defender.

CIRCUIT CONFLICT COMMITTEES

Section 925.037, F.S., provides that a conflict committee be established in every circuit to be comprised of the following representatives:

- The chief judge or his or her designee;
- One representative from the board of county commissioners; and
- The public defender.

The conflict committee is responsible for selecting and approving attorneys who are eligible for appointment as a special assistant public defender. Circuit Conflict Committees are required to meet at least once a year.

Chapter 2000-237, Laws of Florida, authorized the creation of pilot projects to reimburse three counties for reasonable and necessary conflict counsel fees, expenses, and costs. The counties designated for the pilot projects –Polk, Hillsborough, and Miami-Dade –were charged with instituting cost containment and accountability processes, and to provide a detailed report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Committee on Article V¹. Specific appropriation 2670B of the 2000-2001 General Appropriations Act created and authorized funding for reimbursement of reasonable and necessary conflict counsel fees, expenses, and costs in criminal cases as part of the project. Specific instructions to the participating counties were developed by staff from the Office of the State Courts Administrator (OSCA) in consultation with staff from the Florida Legislature. The Legislature again funded the pilot project in the fiscal year 2001-2002 budget; however the project was vetoed by the Governor. A final report was issued.²

¹ The Joint Legislative Committee on Article V was created in CS/SB 1212 (Chapter 2000-237, Laws of Florida). It was comprised of eight members, with four appointed from each house of the Legislature. The committee was charged with overseeing the implementation of Revision 7. The committee met only once on May 8, 2002. Brief overview presentations were made and a Request for Proposal (RFP) for consultant services was adopted. A contract was subsequently awarded to MGT of America, Inc., in August, 2002. The contract entails four phases of work to be performed by MGT. To date, two reports have been submitted to the Legislature: Phase I – Description of the Court System Operations and Phase II – Recommendations to Increase Efficiency/Reduce Costs of Essential Services. No new appointments to the joint committee have been made.

² Additional information regarding the pilot project and contact information for staff at the OSCA involved in the project can be accessed at <http://www.flcourts.org/osca/divisions/ArticleV/index2.html>

THE CLERKS OF THE CIRCUIT AND COUNTY COURTS

Clerks of the circuit courts are elected constitutional officials. *See* Art. VIII, s. 1, Fla. Const. (2002). Although the Florida Constitution provides for the establishment of the clerks of the courts in each county, the duties of the clerks are set forth by special or general law. *See* Art V, s. 16, Fla. Const. The duties of the clerk may be divided as if between two officers, one serving as the clerk and the other serving as the county financial officer (i.e., clerk for the board of county commissioners, auditor, recorder and custodian of all county funds).

Although the duties of the clerk of the circuit court are set out through numerous statutory chapters to include issuances of marriage licenses, recordings of plats, and collection or administration of fines and court charges imposed for a variety of criminal and non-criminal violations, their primary duties are set forth in Chapter 28, F.S. The clerk of the court is the official recorder of all instruments. *See* s. 28.222, F.S.; Art. VIII, s. 1, Fla. Const. (2002).

According to the Florida Association of Court Clerks and Comptrollers, the clerks' offices are funded either as "fee clerks" or "budget clerks". The fee clerks are funded primarily or solely by service charges, fees, and court costs or specific appropriations from the county government. The budget clerks submit an annual budget to the county and are funded in the same manner as any other department of the county government. The clerks collect numerous fees, service charges, and court costs related to the functions of the judicial system. These funds are distributed in accordance with the statute, court rule, local court rule, or ordinance which authorized the charge. Fee clerks retain those amounts authorized to cover operating costs and budget clerks deposit the funds collected into county accounts.

III. Effect of Proposed Changes:

The bill for SB 1184 expands upon the initial framework provided in CS/SB 1212 (Chapter 2000-237, Laws of Florida) for the continued implementation of Revision 7 to the State Constitution. The elements of the state court system, the state attorneys' offices, the public defenders' offices, and court-appointed counsel to be provided by state revenues appropriated by general law are identified further and subsequently defined. In addition, the bill revises the definitions of certain items identified to be funded by the counties pursuant to Revision 7. A process is established for the identification and funding of local requirements of the state courts system.

Significant changes are proposed to the responsibilities of public defenders and circuit conflict committees in recognition of the need for statewide uniformity and standards in providing court-appointed legal counsel in criminal and civil cases. Under the bill, circuit indigent representation committees shall be comprised of the chief judge of the judicial circuit or designee, one experienced criminal defense attorney, one experienced civil trial attorney and the public defender. The committees are charged with determining the most appropriate and cost-effective method of providing legal representation and for developing a schedule of standard fees and expense allowances. Expenditures exceeding those set by the committee may not be allowed without prior court approval.

The Florida Public Defenders Association and the Office of the State Courts Administrator are charged with setting the eligibility and performance standards of court-appointed and conflict attorneys that, in turn, must be applied by every circuit indigent representation committee. The public defender is required to designate an individual to serve as the coordinator for the circuit indigent representation committee responsible for handling administrative matters for the committee. The Justice Administrative Commission is required to prepare and issue a quarterly state-wide report comparing actual year-to-date expenditures to budgeted amounts for the circuit indigent representation committees in each of the judicial circuits. The bill also requires the Chief Financial Officer to report to the Legislature certain court expenditures incurred by the county and the bill appropriates \$50,000 in General Revenue for the requirement.

A section by section analysis of the bill follows:

SECTION 1: Amends s. 27.02, F.S., relating to duties of state attorneys before the court, to provide that the state attorneys shall provide discovery materials to the defendant pursuant to the applicable rule of procedure and may charge fees as provided in s. 119.07(1)(a), F.S., but may not charge more than \$0.15 per page for a copy for a non-certified copy of a public record. Indigent defendants would not be required to pay fees under this provision. This section is effective July 1, 2004.

SECTION 2: Amends s. 27.15, F.S., relating to state attorneys assisting in other circuits, to provide that expenses incurred because of a state attorney executive assignment to another circuit shall be paid from the appropriation provided by the state for the state attorney who is being assisted in the discharge of his or her duties, rather than the appropriation provided for the circuit court. It also clarifies that all other costs attendant to the prosecution of such cases shall be paid by the entity obligated to pay the expense in the absence of an executive assignment. This section is effective July 1, 2004.

SECTION 3: Amends s. 27.34, F.S., relating to salaries and other related costs of state attorneys, to prohibit a county or municipality from contracting with, or appropriating or contributing funds to, the state attorney for the prosecution of a violation of a special law or ordinance of the county or municipality. A county or municipality is prohibited from appropriating or contributing funds to pay for the salary of an assistant state attorney for the investigation and prosecution of civil and criminal RICO actions that occur within the boundaries of the county or municipality. Subsection (2), which sets forth those items to be provided to the state attorneys by the counties, is deleted. This section is effective July 1, 2004.

SECTION 4: Amends s. 27.3455, F.S., relating to the annual statement of certain revenues and expenditures, to conform statutory references to other provisions in the bill. This section is effective July 1, 2004.

SECTION 5: Amends s. 27.51, F.S., relating to duties of public defenders, expands the enumerated duties of the public defender to include duties specified in current law in other sections of Florida Statutes, generally securing representation for indigents in specified cases where such individuals are entitled to court-appointed counsel. The public defender's responsibility with respect to indigents charged with a violation of a municipal or county ordinance in county court is eliminated. Subsection (5) of s. 27.51, F.S., prohibiting the public

defender from representing in appellate proceedings a person sentenced to death when the person was represented by the public defender at trial, is deleted. This section is effective July 1, 2004.

SECTION 6: Amends s. 27.53, F.S., relating to the appointment of assistants and other staff of the public defenders, to clarify that any member of The Florida Bar, in good standing, may volunteer to represent indigent defendants, rather than register his availability for special assignments with the public defender. The provision that they be paid a fee and costs and expenses as provided in s. 925.036, F.S., is deleted. The public defender must apply the uniform conflict standards adopted by the Florida Public Defenders Association in determining whether there is a conflict of interest. A public defender is prohibited from withdrawing from a case based solely upon inadequacy of funding or excess workload. If the court grants a public defender's motion to withdraw, it must appoint an attorney who meets the eligibility and performance requirements set by the Florida Public Defenders Association and the Office of the State Court Administrator. The court is required to appoint conflict counsel in the manner approved by the circuit indigent representation committee. This section is effective July 1, 2004.

SECTION 7: Amends s. 27.54, F.S., relating to expenditures for the public defender office, prohibiting a county or municipality from contracting with, or appropriating or contributing funds to, the public defender for the purpose of defending indigents charged with violations of special laws or violations of county or municipality ordinances. A provision is eliminated which allowed the public defender to employ legal and support staff upon certification by the public defender that inadequate resources will result in withdrawal of current cases or inability to accept additional appointments. Subsection (3) is deleted, which sets forth those items to be provided to the public defenders by the counties. Subsection (4) is also deleted, which prohibited public defenders from receiving any supplemental salary from any county or municipality. This section is effective July 1, 2004.

SECTION 8: Amends s. 27.562, F.S., relating to the disposition of funds, to redirect those funds and fees collected under ss. 938.29 and 27.52 (relating to liens for attorneys fees and costs when a public defender or conflict attorney has been appointed and the determination of indigence application fee) from the counties to the state. All judgments entered under this part shall be in the name of the state and deposited into the General Revenue Fund of the state. This section is effective July 1, 2004.

SECTION 9: Amends s. 27.58, F.S., relating to the administration of public defender services, to change the name of the service to "indigent representation" to conform to changes made in s. 27.51, F.S., by the bill. This section is effective July 1, 2004.

SECTION 10: Amends s. 28.24, F.S., relating to service charges by the clerk of the circuit court, to provide that the clerk of the court shall provide, without charge to any justice or judge, state attorney or public defender, access and copies of any public records held by the clerk, notwithstanding the exempt or confidential nature of such public records. This section is effective July 1, 2003.

SECTION 11: Amends s. 29.001, F.S., relating to the state courts system, removing intent language and changing the term "essential elements" to "elements". The funding for the state courts system, the state attorneys' offices, the public defenders' offices, and court-appointed

counsel shall be provided from state revenues appropriated by general law, except for those items to be funded by the counties. The counties are made financially responsible for the payment of all reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements as defined by s. 29.008(2), F.S. This section is effective July 1, 2004.

SECTION 12: Amends s. 29.002, F.S., relating to the basis for funding, to clarify that for purposes of implementing, rather than pursuant to, s. 14, Art. V of the State Constitution on or before July 1, 2004, the Legislature's appropriation of funding shall be based upon reliable and auditable data. The term "essential element" is changed to "element". This section is effective July 1, 2004.

SECTION 13: Amends s. 29.004, F.S., relating to the state courts system, changing the term "essential elements" to "elements" and stating that the enumerated elements of the state courts system are to be provided from state revenues appropriated by general law. Changes to the enumerated elements of the state court system are made as follows: "judges appointed or elected" is retained, but the phrase "and essential staff, expenses, and costs as determined by general law" is deleted; "juror compensation and expenses" is retained, but the phrase "and reasonable juror accommodations when necessary" is deleted; "transcription services" is added to court reporting services; court "foreign language interpreters and translators" is retained, but "sign-language interpreters" is added, and the phrase "essential to comply with constitutional requirements" is deleted. New elements enumerated in this section are as follows: court expert witnesses, other court witnesses, and witness coordination programs; legal support to judges; masters and hearing officers; court administration; case management; mediation-alternate dispute resolution; the Judicial Qualifications Commission; the offices of the appellate clerks and marshals and appellate law libraries; and the investigation and assessment of indigency. Case management is clarified to include specified activities, and is differentiated from the case intake and records management functions conducted by the clerk of the court. Also included within the definition of each enumerated element are associated staff, expenses, and costs determined by the legislature to be reasonably required to provide the element. Auxiliary aids and services is deleted as an element. This section is effective July 1, 2004.

SECTION 14: Amends s. 29.005, F.S., relating to state attorneys' offices and prosecution expenses, changing the term "essential elements" to "elements" and stating that the enumerated elements of the state attorneys are to be provided from state revenues appropriated by general law. Changes to the enumerated elements are as follows: "transcription services" is added to reasonable court reporting services necessary to meet constitutional or statutory requirements, along with the cost of copying depositions of witnesses and the cost of foreign-language and sign-language interpreters and translators; and "other expert witnesses deemed necessary by the state attorney to perform his or her duties" is added to the description of witnesses. New elements added are: reasonable transportation services; reasonable travel expenses; reasonable library and electronic legal research services, other than a public law library; and reasonable pre-trial consultation costs. This section is effective July 1, 2004.

SECTION 15: Amends s. 29.006, F.S., relating to public defenders and indigent defense costs, changing the term "essential elements" to "elements" and stating that the enumerated elements of the public defenders are to be provided from state revenues appropriated by general law. Changes to the enumerated elements are as follows: "transcription services" is added to

reasonable court reporting services necessary to meet constitutional or statutory requirements, along with the cost of copying depositions of witnesses and the cost of foreign-language and sign-language interpreters and translators; and “other expert witnesses approved by the court” is added to the description of witnesses. New elements added are: reasonable transportation services; reasonable travel expenses; reasonable library and electronic legal research services, other than a public law library; and reasonable pre-trial consultation costs. This section is effective July 1, 2004.

SECTION 16: Amends s. 29.007, F.S., relating to court-appointed counsel, changing the term “essential elements” to “elements” and stating that the enumerated elements of the court-appointed counsel are to be provided from state revenues appropriated by general law. Private attorneys are “appointed” rather than “assigned” by the court to represent indigents when the public defender cannot provide representation pursuant to ss. 27.53, 925.035, and 925.037 (relating to criminal cases). The element enumerated as “private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings” is modified to be in accordance federal and state statutes, as well as state and federal constitutional guarantees. “Transcription services” is added to reasonable court reporting services necessary to meet constitutional or statutory requirements, along with the cost of copying depositions of witnesses and the cost of foreign-language and sign-language interpreters and translators. “Other expert witnesses approved by the court” is added to the description of witnesses. New elements added are reasonable pre-trial consultation costs and reasonable travel expenses. Investigating and assessing indigency is deleted as an element. This section is effective July 1, 2004.

SECTION 17: Amends s. 29.008, F.S., relating to county funding of court-related functions, to provide that the term “facility” includes “space”, and that the office space provided by the county may not be less than the standards of allotment adopted by the Department of Management Services. These services and office space may not be less than what was provided in the previous fiscal year. County funding must include physical modifications and improvements as are required to comply with the Americans with Disabilities Act. Upon mutual agreement of the county and an affected party, the office space provided can vary from the Department of Management Services standards for facilities leased or constructed after June 30, 2003. It also provides that the term “construction or lease” includes reasonable and necessary costs of leasing facilities, equipment, and furnishing and clarifies that the reference to “volunteers” refers to volunteers of a tenant agency.

The term “utilities” is clarified to mean all such services enumerated therein. The term “communications systems or communications services” is defined to include all telephone services and equipment enumerated, but wireless communication and long-distance charges are deleted from the enumeration. The counties are made responsible for funding auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the courts. Under current law, the term communications systems includes computer systems, equipment and support services. The bill requires that by January 1, 2006, the court computer systems must be integrated and able to share specified information within and between circuits, and between Florida and other states and the federal government using proven, off-the-shelf software packages.

A procedure is created for determining local requirements of the state courts system using criteria to be followed by the chief judge in determining whether a program rises to the level of a local requirement. Local requirements are defined as those specialized programs, non-judicial staff and other expenses associated with specialized court programs, specialized prosecution or defense needs, or resources that are needed in a local jurisdiction as a result of special factors or circumstances enumerated in the section. The chief judge must follow a procedure in determining the local requirements, including consulting the state attorney and public defender when their offices are impacted and certifying such requirements to the board of county commissioners. A county may determine whether to provide funding, conduct a pre-audit of requested disbursements, conduct an audit of expenditures, and provide additional financial support for the court system, state attorneys, or public defenders. This section is effective July 1, 2004.

SECTION 18: Amends s. 43.26, F.S., relating to the presiding judge of the circuit, to allow the delegation of contracting authority to the trial court administrator. The term “presiding judge” is changed to “chief judge” to reflect current practice. The power to require attendance clerks, bailiffs, “and all other officers of the court” is added. The chief judge is charged with managing, operating, and overseeing the jury system as provided in s. 40.001, F.S. This section is effective July 1, 2003.

SECTION 19: Creates s. 40.001, F.S., to provide for the division of duties between the chief judge and the clerk of the court regarding the processing of jurors. The chief judge of the circuit is vested with overall authority and responsibility for the jury system. It also provides for responsibilities of the clerk of the court within the jury system. The jury system within each circuit must operate consistent with jury management practices adopted by the Supreme Court. This section is effective July 1, 2003.

SECTION 20: Amends s. 92.153, F.S., relating to the production of documents by witnesses and reimbursement of costs, to provide that the cost of documents produced pursuant to a state attorney or public defender subpoena or records request may not exceed \$0.15 per page and \$10.00 per hour for research and retrieval. This section is effective July 1, 2003.

SECTION 21: Amends s. 925.035, F.S., relating to the appointment and compensation of attorneys in capital cases to add a cross-reference and to provide that all attorneys handling capital cases must meet the minimum standards for attorneys in capital cases adopted by the Florida Supreme Court and the eligibility and performance standards set by the Florida Public Defenders Association and the Office of the State Courts Administrator. References to compensation as set forth in s. 925.036 and the \$1,000 cap on attorneys fees and costs incurred in representing a defendant in an executive clemency proceeding are deleted, and replaced with a provision for compensation pursuant to s. 925.037, F.S. The bill clarifies the current law that provides that if a death sentence is imposed and later affirmed by the Supreme Court, the trial court imposing the death penalty may appoint a public defender or conflict counsel to represent a defendant who has applied for executive clemency. All costs that a county is required to pay under this section is now pursuant to s. 29.008, F.S. This section is effective July 1, 2004.

SECTION 22: Amends s. 925.036, F.S., relating to appointed counsel to add a cross-reference to s. 27.51 and to provide for compensation at a rate to be fixed by the circuit indigent

representation committee. The statutory caps on attorney's fees and expenses are deleted accordingly. A conflict attorney appointed in lieu of a public defender or an attorney appointed to a case as enumerated in s. 27.51 may not permit an attorney who does not meet the eligibility and performance standards set by the Florida Public Defenders Association and the Office of the State Courts Administrator to appear at a critical state of an indigent person's case. An exception is provided for certified interns with the public defenders' offices when appearing under appropriate supervision. This section is effective July 1, 2004.

SECTION 23: Amends s. 925.037, F.S., relating to reimbursement of counties for conflict costs and relating to circuit conflict committees. The name of the circuit conflict committees is changed to "circuit indigent representation committees" to conform to revisions to s. 27.51, F.S. The composition of the committee is changed by removing the representative of the board of county commissioners and replacing him or her with one experienced private criminal defense attorney. One experienced civil trial attorney is also added to the composition of the committee, and the public defender is designated to chair the committee.

Both the criminal defense attorney and the civil trial attorney are prohibited from being the attorney of record in a court-appointed or non-capital criminal conflict case from the time of appointment through their two year term. The circuit indigent representation committee must meet at least quarterly, rather than annually and must determine the most appropriate and cost-effective method of providing legal representation.

The committee must also develop a schedule of standard fees and expense allowances. The civil trial attorney appointed to the committee may not participate in the development of the fee and expense schedule for criminal cases. Similarly, the criminal defense attorney may not participate in the development of the fee and expense schedule for civil cases. Expenditures exceeding those set by the committee are not allowed without prior court approval.

The Florida Public Defenders Association and the Office of State Courts Administrator must incorporate requirements related to length of bar membership, continuing legal education, and relevant trial experience in the standards. The experience standards for criminal cases must require a minimum participation in three criminal trials for a third-degree felony case and five criminal trials for a case involving a felony of the second degree or higher degree. The public defender is prohibited from participating in case-related decisions and other related matters in conflict cases.

The Justice Administrative Commission must prepare and distribute a quarterly state-wide report on the expenditures for circuit indigent representation committees. The public defender must designate a committee coordinator to handle the administrative matters of the committee. The public defender may require that the coordinator be housed in a location separate from the public defender. The positions and funding for the administration of the circuit indigent representation committee program shall be as appropriated to the public defenders in the General Appropriations Act. Separate appropriations are required within the Justice Administrative Commission for funds for criminal conflict case fees and expenses; Chapter 394 conflict case fees and expenses; and fees and expenses in child dependency cases and other court-appointed attorney cases.

All references to county responsibilities and procedures for reimbursement to counties for conflict costs are deleted. Certain requirements for reporting of conflict costs to the Legislative Committee on Intergovernmental Relations and the Comptroller are deleted. This section is effective July 1, 2004.

SECTION 24: Amends s. 43.35, F.S. to rename witness coordinating offices to witness coordinating programs. Responsibility for establishing the witness coordinating program is changed from the court administrator to the circuit court. The bill allows circuit courts to contract for such programs. This section is effective July 1, 2003.

SECTION 25: Provides that notwithstanding any law to the contrary, any judicial act may be performed by any judge or justice on any day of the week, including Sundays and holidays. This section is effective July 1, 2003.

SECTION 26: Repeals s. 27.005, F.S., containing definitions as it is no longer applicable under the bill. Repeals additional sections that are unnecessary under the bill: s. 27.006, F.S., providing appropriations to the counties for court reporters; s. 27.385, F.S. relating to county expenditures of state attorneys; s. 29.011, F.S. relating to the conflict attorney pilot project; s. 27.52(a) (1), F.S. relating to determination of indigency, and 40.02, (3), F.S., relating to the chief judge's authority to designate to the circuit court specified duties of the clerk relating to jurors. This section is effective July 1, 2004.

SECTION 27: Re-enacts s. 943.053, F.S., relating to the dissemination of criminal justice information to incorporate the amendments to ss. 27.51 and 27.53, F.S. This section is effective July 1, 2004.

SECTION 28: Provides that the transfer of the funding responsibility for the state courts system shall not affect the validity of any judicial or administrative proceeding pending on the day of the transfer. The entity providing appropriations on and after July 1, 2004 shall be considered the successor in interest to any existing contracts, but is not responsible for the funding of services rendered prior to July 1, 2004.

SECTION 29: Requires the Chief Financial Officer to provide to the legislature by November 1, 2003 specified information on court-related costs paid by the counties for the county fiscal year ended September 30, 2002. The clerks of the court are required to provide such information to the Chief Financial Officer in a manner and by deadlines prescribed by the Chief Financial Officer. Assistance must also be provided by the state attorneys, public defenders, court administrators, boards of county commissioners, and sheriffs. Assistance shall be provided by the Legislative Committee on Intergovernmental Relations, and technical advice shall be provided by the Auditor General. An appropriation of \$50,000 from General Revenue is provided to the Chief Financial Officer to pay the costs of this requirement. This section is effective July 1, 2003.

SECTION 30: Provides that except as otherwise expressly provided in the act, the act shall take effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may have an impact on those attorneys who serve as conflict counsel. There may also be an impact on those vendors under contract with the counties for goods and services provided for court operations.

C. Government Sector Impact:

For fiscal year 2003-2004, the bill appropriates \$50,000 from General Revenue Fund to the Chief Financial Officer. It does not appear to have any other fiscal impact on state government for the 2003-2004 fiscal year.

For fiscal year 2004-2005 and subsequent fiscal years, the fiscal impact of this bill to the state is significant but indeterminate at this time. The unaudited fiscal year 1999-2000 county expenditure data submitted to the Chief Financial Officer pursuant to s. 218.32, F.S., show that those court system elements that were not previously enumerated in Chapter 29, F.S., but that would become explicit state responsibilities under this bill account for an estimated \$115.9 million of the 1999-2000 county expenditures. For a better estimate of the impact to state government, the bill requires the Chief Financial Officer to conduct an analysis of the cost data reported by the counties. This will allow the legislature to more accurately determine the county expenditures related to such elements. The legislature must also determine the extent to which those expenditures are reasonable and appropriate for funding by the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
