

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: H0113A Article V
SPONSOR(S): Benson, Negron, Mahon, Gelber
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Calendar		DeBeaugrine	Hogge
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V provides for the judicial branch of government. According to the ballot summary, Revision 7 “allocates state court system funding among state, counties, and users of courts.” Revision 7 must be “fully effectuated” by July 1, 2004.

In summary, this bill continues the implementation of Constitutional Revision 7 to Article V of the Florida Constitution begun by the Legislature in 2000 and largely reflects the recommendations of the House Select Committee on Article V. Please see Section III.C. at the end of this analysis for a description of specific differences between the committee recommendations and this bill. Specifically, the bill would:

- delineate state and county funding responsibilities, including defining “local requirements”;
- remove certain mandates imposed on circuits;
- permit state attorneys to prosecute ordinance violations only when ancillary to a state charge;
- create contingency funds to alleviate deficits in due process appropriations categories;
- establish a process for selecting and compensating court-appointed counsel;
- create cost containment mechanisms, including an Article V Indigent Services Advisory Board;
- increase the maximum allowable filing fees and service charges and permit clerks of court to impose these charges within these maximum amounts to fund court-related functions;
- increase clerks share of court-related revenue they collect to 2/3;
- earmark county fine and forfeiture funds for use by the clerks of court;
- revise amounts of state taxes shared with local governments;
- impose numerous court-related charges by operation of law rather than by court order;
- undertake an analysis of county court-related expenditure and revenue data for FY 2001-02; direct clerks to report certain assessment and collection amounts beginning July 1, 2003; and
- require clerks to maintain accounts receivable and accept partial payments and prioritize clerk disbursement of partial payments;
- create a Clerk of Court Operations Conference and establish responsibilities

The fiscal impact on state expenditures is not known at this time, but could be roughly \$260 million based on county expenditures for FY 2000-01 inflated forward to FY 2004-05. Additional revenue to the state is projected to be approximately \$260 million to offset these costs. Counties would experience potential cost savings of \$550 million which would be offset by a \$115 million reduction in state revenue sharing. Please see section II. of this analysis for more detail.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: May 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill would continue the implementation of Constitutional Revision 7,¹ approved by the voters in November 1998. According to the ballot summary, Revision 7 "allocates state court system funding among state, counties, and users of courts."

Voter approval of Revision 7 to Article V in November 1998, presented the Legislature with a host of implementation issues to address before July 1, 2004, the date by which the Revision must be "fully effectuated." The Legislature has responded to Revision 7 in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation. MGT of America, the firm under contract to the Legislature, has completed the first two phases of the four phase project. Remaining phases are due in mid-April.

Under Revision 7, state revenues must be used to fund the "state courts system," less salaries, costs and expenses necessary to meet "local requirements." For purposes of implementing Revision 7 to Article V, the Legislature has defined the "state courts system" as the "essential elements of the Supreme Court, district courts of appeal, circuit courts, county courts, and essential supports thereto." The Legislature has not defined the phrase "local requirements." The state also must continue to fund

¹ Art. V, s. 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 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.

the offices of the state attorneys and public defenders, other than facilities, communications services, and functions considered to be "local requirements" of the state courts system. Additionally, the state must continue to pay the salaries of justices and judges. Finally, to the extent user fees in an amount sufficient to fund the court-related functions performed by the clerks of county and circuit court are constitutionally precluded, state revenues must be used to supplement user fee revenues.

Counties too have specific funding responsibilities. They must fund "reasonable and necessary salaries, costs, and expenses" of the "state courts system" to meet "local requirements" as determined by general law. The extent of this obligation has not been determined since the Legislature has not yet defined the phrase "local requirements". Counties also must fund the cost of facilities for the trial courts and the offices of the state attorney and public defender, including the costs of construction, leasing, maintenance, security and utilities. Counties must also fund the cost of "communications services," defined by the Legislature as including "telephone services and equipment; and computer systems and equipment, including computer hardware and software, network connections... necessary for an integrated computer system to support the state courts system, offices of the state attorney and public defender, and offices of the Clerk."

Users must fund the court-related functions performed by the clerks of the county and circuit courts. They must be funded entirely by filing fees, service charges, and costs, except to the extent user fees in a sufficient amount to fund these costs are constitutionally precluded. User fees also may be a source of funding for selected salaries, costs, and expenses of the "state courts system."

On January 10, 2003, House Speaker Johnnie Byrd appointed a Select Committee on Article V, chaired by Representative Holly Benson, to recommend legislation for 2003, for the purpose of:

- delineating the specific funding responsibilities of the state, counties, and users;
- identifying ways to fund these responsibilities;
- addressing the functional management structure and functional responsibilities and staffing including, where appropriate, privatization of functions;
- establishing the budget and financial management structure;
- identifying any necessary funding methodologies;
- identifying any operational efficiencies; and
- identifying state data needs for system management and assigning responsibility for collecting and reporting information.

On April 8, 2003, the House Select Committee on Article V issued a final report including most of the proposals reflected in this bill (see section III. C. for a detailed list of changes between this bill and the committee recommendations).

Proposed Changes

In summary, the bill would continue the implementation of Constitutional Revision 7 to Article V of the Florida Constitution begun by the Legislature in 2000. Specifically, the bill would:

- delineate state and county funding responsibilities, including defining "local requirements";
- remove certain mandates imposed on circuits;
- permit state attorneys to prosecute ordinance violations only when ancillary to a state charge;
- create contingency funds to alleviate deficits in due process appropriations categories;
- establish a process for selecting and compensating court-appointed counsel;
- create cost containment mechanisms, including an Article V Indigent Services Advisory Board;
- increase the maximum allowable filing fees and service charges and permit clerks of court to impose these charges within these maximum amounts to fund court-related functions;
- increase clerks share of court-related revenue they collect to 2/3;
- earmark county fine and forfeiture funds for use by the clerks of court;

- revise amounts of state taxes shared with local governments;
- impose numerous court-related charges by operation of law rather than by court order;
- undertake an analysis of county court-related expenditure and revenue data for FY 2001-02; direct clerks to report certain assessment and collection amounts beginning July 1, 2003; and
- require clerks to maintain accounts receivable and accept partial payments and prioritize clerk disbursement of partial payments;
- create a Clerk of Court Operations Conference and establish responsibilities

A. Functions and Funding Responsibilities

1. State funding. The bill delineates the elements of the state courts system, state attorney and public defender offices, and court-appointed counsel the state will fund. Most of these are the elements currently identified as “essential” in general law.

[Currently, elements of the state courts system identified as “essential” include judges and their essential staff, costs, and expenses; juror compensation, court reporting services, auxiliary aids, appellate court facilities, interpreters, and the Judicial Qualifications Commission. Added to this list to be funded from state revenue through the normal budget process would be masters and hearing officers, mediation and arbitration, court administration, case management, basic legal materials accessible to the public, and offices of appellate clerks and appellate law libraries. Case management would be defined to exclude the costs associated with the application of therapeutic jurisprudence principles by the courts.]

Currently, elements of state attorney and public defender offices deemed “essential” include state attorney/public defender and staff; court reporting services, witnesses, and certain appointed mental health professionals. Added to this list to be funded from state revenue through the normal budget process would be translator services necessary to meet constitutional requirements, reasonably necessary travel expenses, reasonable transportation services, reasonable pre-trial consultation fees and costs, and reasonable library services. For “court-appointed counsel,” the state similarly would fund reasonably necessary travel expenses and reasonable pretrial consultation fees and costs.]

2. County funding. The bill revises county funding obligations, but delays from July 1, 2003, until July 1, 2004, the effective date for implementing certain county funding obligations as specified in general law relating to Revision 7.

- Counties must continue to fund “communications services,” but the definition is revised to exclude such items as postage, printed documents, wireless communications, and pagers. However, the counties will be required to transfer ownership of these items to the state at no charge on July 1, 2004.
- Counties must continue to fund “facilities,” but the definition of “construction or lease” as it applies to facilities is revised to exclude equipment and furnishings effective July 1, 2005, except for that “appropriate and customary for courtrooms, jury facilities, and public areas of courthouses.” Counties will be required to transfer ownership of excluded equipment and furnishings effective July 1, 2005. Office space provided by counties will be required to be in accordance with Department of Management Services standards, except by mutual agreement of the parties. This office space standard will apply to facilities constructed or leased after July 1, 2003.
- In the case of ordinance violations that are not ancillary to a state charge, counties would fund prosecution costs and defense services for indigents entitled to representation.

- Counties would provide funding for drug courts not assumed by the state. The state would fund service referral, coordination, monitoring, and tracking for treatment-based drug court programs, in addition to funding the judges, state attorneys, and public defenders.
- Teen courts would remain optional with counties, but counties would no longer be able to impose mandatory costs as a source of funding.
- “Local requirements” would be defined to exist when created pursuant to an express statutory directive or circumstances in a given area necessitate implementation of specialized programs or other special needs. Factors in establishing a local requirement include geographic and demographic considerations. Local requirements imposed by state directive would be legal aid programs and alternative sanctions coordinators. Counties would be permitted, through inter-local agreement, to collectively fund these requirements, including legal aid programs and alternatives sanctions coordinators.

3. Local ordinance violations. The bill would prohibit state attorneys from prosecuting violations of local ordinances unless ancillary to a state charge. Likewise, public defenders would no longer be permitted to defend indigents accused of ordinance violations unless ancillary to a state charge. Counties would be authorized to establish a prosecutorial authority to prosecute these violations.

[Currently, counties may contract with state attorneys to prosecute ordinance violations. They may fund the salary of one assistant state attorney solely to handle ordinance or special law violations.]

4. Circuit mandates. Circuits would no longer be required to establish a drug court program and approve parenting courses and course provider lists.

5. Witness coordination: Replaces the requirement for court administrators to have a witness coordination office to a general requirement for state attorneys and public defenders to perform certain coordination responsibilities.

B. Financial Management

1. Revenue and expenditure analysis. The bill requires the Chief Financial Officer to conduct an extensive analysis of court-related expenditures incurred and revenues collected by counties for FY 2001-02, for use by the Legislature in budgeting for FY 2004-05. Requires submission of report by November 1, 2003.

[Currently, counties report court-related revenues and expenditures based on the Uniform Accounting System Manual. Counties must report this information pursuant to s. 218.32 (annual financial report), s. 218.321 (annual financial statement), and s. 218.39 (annual financial audit reports). Some have called into question the accuracy of the reported court-related revenue and expenditure data.]

2. Accounting systems revisions. The bill requires the Department of Financial Services to undertake a review of the Florida Accounting Information Resource (FLAIR) subsystem and Uniform Accounting System Manual (UCA) to determine the need for any necessary revisions to existing account descriptions and account codes used in recording expenditures and revenues associated with Article V. Requires adoption of revisions by July 1, 2004.

[Currently, the FLAIR, the state financial accounting system, may not include appropriate accounts to record state-funded court-related expenditures currently borne by counties. The

Uniform Accounting System Manual account descriptions have been criticized by some for not being descriptive enough to aid in proper recording of revenues and expenditures.]

3. Contingency fund. The bill provides for the creation of a contingency fund for the judicial branch and within the Justice Administrative Commission to alleviate deficits in due process service appropriation categories. The bill also provides for a process designed to identify and transfer surplus funds from existing appropriations prior to reliance on the contingency fund. The bill further provides that the contingency fund cannot be used to alleviate a deficit arising from the appointment of conflict counsel based on a claim of excessive workload.

C. Cost Containment

1. Article V Indigent Services Advisory Board. The bill creates the Article V Indigent Services Board to advise the Legislature concerning cost containment strategies and policies and qualification and compensation standards governing the expenditure of state appropriated due process funds for service providers such as court-appointed counsel, court reporters, court interpreters, and expert witnesses; recommending adjustments to existing statutory compensation standards for private court-appointed counsel; approving standard form contracts for use by circuit Article V indigent services committees (among others) in procuring due process services; and identifying due process services that should be included on state contract and opportunities for competitively bidding for services on a state, regional, or circuit basis. The board is to consist of 12 members, 3 each appointed by the Governor, Senate President, House Speaker, and Chief Justice.

[In Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), the Florida Supreme Court found “fee maximums unconstitutional when applied to cases involving extraordinary circumstances and unusual representation.” The Court ruled that “in extraordinary and unusual cases” the court may depart from the statute’s fee guidelines “when necessary in order to ensure that an attorney who has served the public by defending the accused is not compensated in an amount which is confiscatory of his or her time, energy and talents.”]

2. Determination of indigent status. The bill directs clerks to determine the indigent status of applicants for court-appointed counsel and other due process services. It also preserves the right of individuals to have the clerk’s determination reviewed by the court at the next scheduled hearing. The income threshold to qualify as indigent is lowered from 250 percent of the federal poverty level to 200 percent.

[Currently, the determination of indigent status is made by the court. Applicants for court-appointed counsel must file a financial affidavit with the clerk and pay a \$40 application fee. To be declared indigent, the Legislature requires an income of no more than 250 percent of the federal poverty level or an inability to pay without substantial hardship. A defendant is presumed to not be indigent if certain factors exist (e.g., released on bail of \$5,000 or more, equity interest in real or personal property, retained private counsel before or after filing the affidavit.)

The 250 percent income standard is higher than that for many public assistance programs. For example, for temporary cash assistance, 185 percent, food stamps, 100 percent; Medicaid for elderly/disabled, 88 percent, Medicaid for pregnant women, 185 percent, and Medicaid for children, between 100 and 200 percent. The Florida Bar Low Fee Panel uses a standard equal to approximately 177 percent of the federal poverty level.]

D. Court-appointed Counsel

1. Consolidation of provisions. Consolidates provisions relating to conflict counsel and compensation in regards to defendants charged with capital and non-capital offenses into a single section. Conforms provisions as appropriate.

2. Circuit Article V indigent services committees. Circuit conflict committees are reconstituted as circuit Article V indigent services committees with expanded responsibilities. Committees will include the chief judge, public defender, and two members of the private bar—one from civil and one from criminal practice.

[Currently, with respect to private attorneys appointed to represent defendants in cases where the public defender is unable to provide representation because of a conflict of interest, circuits use conflict committees composed of the chief judge, a representative of county commissioners, and the public defender. These conflict committees exist for the purpose of selecting and approving attorneys for all appointments.]

3. Selection method. Reconstitutes circuit conflict committees into circuit Article V indigent services committees. Directs these committees to maintain a registry, by circuit and county and by category of case, of attorneys willing and able to serve as court-appointed counsel in conflict cases and in other cases in which public defenders are not expressly authorized to provide representation. The registry must operate on a blind rotation basis. Circuits must utilize a registry for selecting attorneys, unless attorneys are procured through a competitive bidding process.

[Typically, the selection and appointment process for counsel varies among circuits. With respect to private attorneys appointed to represent defendants in cases where the public defender is unable to provide representation because of a conflict of interest, circuits use conflict committees composed of the chief judge, a representative of county commissioners, and the public defender.]

4. Compensation. Under the bill, private court-appointed counsel would be compensated at rates established by the circuit Article V indigent services committees consistent with standards established by the Legislature after receiving recommendations from the statewide Article V Indigent Services Advisory Board. The court will give initial approval of payment of fees and costs. The bill grants the Justice Administrative Commission standing to contest the reasonableness of billing.

[Currently, court-appointed counsel are compensated in any number of ways—an hourly rate, fixed fee, or some combination thereof. The Legislature has established fee standards and fee caps in criminal proceedings in current law, ranging from \$1,000 for a misdemeanor to \$3,500 for a capital case represented at the trial level. However, see Section III.A.2. of this analysis regarding an opinion of the Florida Supreme Court concerning fee caps.]

5. Conflict motions. The bill expressly directs judges to look into the adequacy of the motion to withdraw due to an ethical conflict. It also grants the Justice Administrative Commission the authority to contract with public or private entities to contest motions to withdraw due to conflict of interest.

[Currently, there appears to be some difference of opinion concerning the extent to which the court can inquire into the sufficiency of a motion filed by a public defender to withdraw from representation due to an ethical conflict of interest.]

E. Court-related Charges

1. Imposition. The bill generally requires fees, service charges, and costs to be imposed as a matter of law, rather than by court order, and eliminates waivers of these fees, service charges, and costs. Requires the clerk of court to enroll those seeking to defer payment of charges because of indigency into a payment program to recover unpaid costs in full.

[Many court-related fees, charges, and costs are imposed at the discretion of the court.]

2. Collections. The bill requires court clerks to report court assessments and collections on a quarterly basis beginning July 1, 2003, and annually beginning July 1, 2004. Also requires clerks to enter into payment plans to recover unpaid charges from persons qualifying as indigent and unable to pay court-related charges in full. Requires court clerks to maintain accounts receivable and accept partial payments. Eliminates the requirement that county commissioners approve court clerk use of third parties to collect court-related funds.

[Currently, the extent to which court-related fees, charges, and costs are being assessed, waived in full or in part, being discharged, or not being collected once assessed is generally unknown. Not all clerks of court maintain accounts receivable, and many reportedly do not accept partial payments. In those instances when they do collect partial payments, clerks must decide in which priority order to assign the partial payment. The order of priority for disbursements will vary among clerks. There generally is no statutory direction.]

3. Disbursement of court-related collections. Generally provides that clerks retain 2/3 of court-related revenue collected with 1/3 to be deposited to the Clerks of the Court Trust Fund within the Department of Revenue. One exception to this requirement is that the first \$50 from filing fees for certain civil actions are to be deposited in their entirety to the General Revenue Fund

The bill redirects funds from liens for payment of public defender or conflict counsel fees and costs into the state general revenue fund.

Provides that for FY 2003-04 only, \$49 of the \$50 filing fee for reopened cases shall be deposited into the Clerks of the Court Trust Fund within the Department of Revenue.

Provides that for FY 2003-04 only, any surplus in amounts collected through a \$3 local discretionary court cost earmarked for teen courts may be used for juvenile drug courts.

4. Priority for allocating partial payments. Partial payments are to be distributed according to specified priorities as follows: (1) that portion payable to the clerks and that portion remitted to the state for deposit into the general revenue fund, (2) that portion payable to state trust funds, and (3) that portion payable to all other recipients. Within each level of priority, funds would be allocated on a pro rata basis.

5. Authority and amount. The bill:

- raises the cap on circuit civil filing fees from \$200 to \$250.
- transfers authority to impose additional circuit civil and county court filing fees from the board of county commissioners to the clerk of court. Therefore, court clerks may impose filing fees in circuit civil in an amount clerks deem necessary to fund their costs within the proposed revised cap of \$250. Charges imposed by county commissions pursuant to this authority will stand repealed July 1, 2004.

[Currently, the state-mandated portion of circuit civil filing fees is \$50.50. The clerk share is \$41. The statewide average filing fee, however, is \$157. In several counties, the full \$200 filing fee is levied. The local option add-on funds law libraries, legal aid programs, and court facilities.]

- beginning July 1, 2003, requires court clerks to impose a \$50 filing fee in circuit civil court for each reopened case for deposit in the Department of Revenue Clerks of the Court Trust

Fund. Defines a "reopened case." For FY 2003-04 only, permits deduction of fee paid to modify a final judgment of dissolution. Beginning July 1, 2004, authorizes clerks of court to set the fee at any amount up to \$50.

[Currently, filing fees are not imposed on cases that are reopened. The only exception is for a modification of a final judgment of dissolution. Reopened cases can include a motion for rehearing and modifications of child support orders, among others. Circuits reported approximately 446,000 reopened cases in their civil divisions for 2000-01.]

- eliminates clerk charges for certain services billed to counties by budget clerks, including the daily court attendance and court minutes, and billed to the Chief Financial Officer such as juror payroll fees and witness payments.
- eliminates county authority to impose additional filing fees in probate matters in addition to state-mandated charges.
- requires counties and municipalities to pay \$200 in additional costs to the clerk when filing a code or ordinance violation in court. Subjects counties to payment of filing fees in county civil court.
- exempts state attorneys and public defenders from payment of fees and charges assessed by the clerk of court.
- converts mandatory service charges for various clerk services, including probate actions, to maximum caps and allows clerks the discretion to establish fees that fall within these maximum amounts.

4. Limitations on charges. The bill exempts state attorneys and public defenders from all clerk charges, and exempts judges and court staff from charges for copies of public records.

F. Clerks of Courts

1. Clerk of Court Operations Conference. Creates the Clerk of Court Operations Conference, consisting of eight clerks elected from among all clerks of court. Duties include reviewing clerk budgets to determine compliance with certain conditions set by the bill and to identify any offices whose court-related revenues are not sufficient to fund the court-related functions of each office. Other duties of the conference include developing performance measures and standards and adjusting the maximum allowable fee amounts to reflect changes in the Consumer Price Index.

2. Clerk functions. Directs clerks to submit a report identifying court-related functions and associated costs for county fiscal year 2003-04, detailing the methodology used to apportion costs between court-related and non-court-related costs. Provides for uniform responsibility of court clerks to handle jury management, but permits court administrators to perform these functions if the county provides funds for this purpose. Requires clerks to provide ministerial pro se assistance services. Provides that clerks are responsible for preliminary determination of eligibility for state-funded counsel in certain criminal and civil cases.

3. Clerks to be funded from filing fees, service charges and fines. The bill provides that clerks are to be funded from their share of filing fees, service charges and certain criminal fine and forfeiture revenues that they collect.

4. Process for resolving deficits. If the conference certifies that the court-related revenue for any clerk of the court office will be insufficient to fund the approved budget of the office, the conference must first determine if the clerk is meeting performance and revenue collection goals. Assuming that all

performance and revenue collections goals have been met, a three-step process is triggered to resolve the deficit. (1) First, the clerk must raise fees to the statutorily authorized maximum amounts or to the level necessary to resolve the deficit, whichever is less. (2) If this step is insufficient to resolve the deficit, the conference may authorize the clerk to retain certain revenue which would otherwise be remitted to the state in an amount sufficient to resolve the deficit. (3) If there is still a projected deficit after the second step is taken, the conference can authorize supplemental funding to be provided from the Clerk of Court Trust Fund within the Department of Revenue in an amount sufficient to resolve the deficit. The bill provides for a continuing appropriation from the Clerk of Court Trust Fund upon certification of deficits by the conference.

G. Local Finances

1. Redistribution of state revenue shared with local government. The bill revises the current distribution of sales and use tax revenues that go to local governments. The net impact is to reduce the amount of funds that are distributed to county governments equal to the projected growth in income from the half-cent sales tax distribution. The distribution to the Local Government Half-cent Sales Tax Clearing Trust Fund is reduced from 9.653 percent to 8.814 percent. The distribution to the Local Government Half-cent Sales Tax Clearing Trust Fund for the emergency distribution is increased from 0.065 percent to 0.095 percent. The distribution to the Revenue Sharing Trust Fund for Counties is reduced from 2.25 percent to 2.0440 percent. The distribution to the Revenue Sharing Trust Fund for Municipalities is increased from 1.0715 percent to 1.3409 percent. The net impact of this is to redirect projected growth of state-shared revenue so that local governments are held harmless relative to FY 2003-04. Thereafter, local revenue will grow at the rebased amount at the rate of overall tax collections.

2. Revised authority of local government to pledge state-shared revenue for debt. Expands the authority of county governments to pledge funds received pursuant to the Revenue Sharing Act of 1972 to no more than 50% of the funds received in the prior year.

[Currently, cities are prohibited from pledging revenue in excess of the guaranteed entitlement as defined in s. 218.21 (funds received in FY 1971-72). Counties can pledge the amount of the guaranteed entitlement (funds received for FY 1971-72) plus the second guaranteed entitlement (funds received for FY 1981-82).]

3. Expanded use of local discretionary sales surtaxes. The bill would expand the allowable uses of local discretionary sales surtaxes to include construction, lease, maintenance, utilities and security for court facilities.

[Currently, local option taxes are limited to certain defined purposes such as environmental projects, construction of public facilities and public safety equipment.]

4. Revised definition of guaranteed entitlement for municipalities authorized by s.6(f), Article VIII of the Constitution (Metro Dade). The bill redefines the guaranteed entitlement from the Revenue Sharing Trust Fund for Municipalities for Metro Dade to the aggregate amount it received in FY 2003-04.

[Currently, the guaranteed entitlement for Metro Dade is defined as the amount received for the preceding year plus the percentage increase equal to the percentage increase of the Revenue Sharing Trust Fund for the preceding year.]

H. Technology

The bill requires the integrated computer system funded by counties pursuant to s. 29.008, F.S., to be operational by July 1, 2006.

I. Other

1. Justice Administrative Commission status. The bill eliminates reference to the Justice Administrative Commission as part of the judicial branch of government.

2. Judicial work hours. The bill provides that judicial work may take place on Sundays and holidays.

3. Pending judicial or administrative proceedings/existing contracts. The bill provides that the transfer of funding responsibilities necessitated under Revision 7 will not affect the validity of any pending judicial or administrative proceeding. Further, the state will be considered the successor to any existing contracts for services it ratifies. State will not be responsible for funding services provided in whole or part prior to July 1, 2004.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On a recurring basis, the bill is projected to increase state revenue by approximately \$240 million to \$260 million. Of this amount, approximately \$115 million is expected to result from changes in the local government half-cent sales tax distribution. The state's share of filing fees, services charges, and other court-related collections from the clerks of the court is projected to generate between \$125 million to \$145 million. These amounts can be expected to increase in the future due to normal growth and the provisions in the bill that allow the fee caps to be adjusted based on the rate of inflation.

The reader is cautioned to be mindful of the fact that the model used to estimate court-related revenue collected by the Clerks of the Court that will be remitted to the state is untested.

2. Expenditures:

The impact of this bill on state expenditures is indeterminate at this time due to data limitations concerning local court expenditures and the fact that the legislative appropriations process will ultimately determine which court-related activities will be funded and the appropriate funding level. Based on county-reported data to the state Uniform Chart of Accounts (UCA) for FY 2000-01, inflated forward to FY 2004-05, state expenditure requirements could be as high as \$260 million.

The reader is cautioned to be mindful of the limitations of using the UCA data in predicting likely state expenditure requirements. While these reports represent the only statutorily mandated, comprehensive source of information on local court-related expenditures, the accuracy and relevance of the data have been questioned by a number of knowledgeable observers. There is a provision in the bill to address this problem by directing the Chief Financial Officer to collect more detailed information on court-related expenditures and to make recommendations to the Legislature for revisions to the UCA.

In addition, the Legislature is not bound by past county practices in determining which activities to fund or the appropriate level of funding for activities that are funded. At best, county reported data only provides a context for discussion by showing the level of funding that other governmental entities provided for court-related activities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent that more clerks charge maximum fees allowed by law, local revenue should increase. There will be an internal shift of funds disbursed within each county, however, from the Board of County Commissioners to the Clerk of the Court. In total, Clerks of Court are expected to receive approximately \$337 million from court-related revenue to support their operations. A clerk's association survey estimated that collections retained by the clerks for FY 1999-00 were \$120 million. This amount is likely to increase due to the ability of clerks to adjust fees based on the rate of inflation.

Changes in the distribution of state taxes shared with local governments are expected to result in \$115 million less state tax revenue going to county governments. This amount is the expected growth in these sources of local revenue so that counties will be held harmless relative to FY 2003-04. Normal growth will resume at the rebased amounts starting in FY 2005-06. The negative impact on municipalities from changes to the half-cent sales tax distribution is, in the aggregate, expected to be offset by the increased distribution to the Revenue Sharing Trust Fund for Municipalities. Likewise, the negative impact of the change in half-cent sales tax distribution on smaller counties with a limited tax base is expected to be offset by the increased share of state taxes going for the emergency distribution.

Counties will no longer receive revenue from public defender liens and from costs recovered from individuals determined to have improperly received public defender services. According to the Uniform Chart of Accounts, public defender liens generated approximately \$2.4 million for FY 2000-01. Recoveries from individuals who improperly received public defender services is not known but is believed to be minimal. Counties will no longer be required to fund the activities that were supported from this source.

Counties will no longer have the authority to levy special service charges to support local mediation and arbitration programs. According to the Uniform Chart of Accounts, 30 Florida counties reported revenue of \$4.3 million during FY 2000-01 for mediation and arbitration programs. Counties will no longer be required to fund the activities that were supported from this source.

Counties will no longer have the ability to impose a \$3 filing fee to cover the costs of teen courts. Revenue resulting from this authority is not reported in the UCA.

Metro Dade's guaranteed entitlement from the municipal revenue sharing program will be set at the aggregate revenue it received for FY 2003-04. Metro Dade is expected to receive \$38.5 million for FY 2003-04. This amount substantially exceeds the amount that Metro Dade would otherwise receive if it only got the amount generated by the regular formula provided in s. 218.23 for metropolitan and consolidated governments. Therefore, future growth of revenue for Metro Dade from this source will not occur until the regular formula provides in excess of the \$38.5 million guaranteed entitlement for Metro Dade. This will gradually benefit other municipalities in the state as more funds become available for statewide distribution than would otherwise be available if the automatic growth in Metro Dade's guaranteed entitlement were to continue.

2. Expenditures:

Counties will experience significant relief from paying many of the costs of the state courts system. Counties reported expenditures of approximately \$777 million for FY 2000-01. According to the Clerks of Court, they retain approximately \$120 million from court system users to cover the costs of operating their offices. Of the remaining \$657 million, the three major items that counties will still be responsible for funding (security, facilities and information systems) total \$162 million. Thus, counties could experience relief of approximately \$495 million, which would equate to roughly \$550 million once inflated forward to FY 2004-05, from the shift of funding responsibility.

Local governments will also be responsible for costs associated with prosecuting local ordinance violations. The cost to counties is indeterminate at this time since costs of prosecuting and defending violations of local ordinances are not separately tracked and reported by the state attorneys or public defenders. In addition, local governments will have to pay \$200 for filing fees for prosecuting violations of local ordinances. According to the Office of State Courts Administrator, there were 118,773 ordinance violations filed in county criminal court. At the maximum \$200 per filing, the resulting cost to counties would be approximately \$23.8 million.

Local governments will also be required to fund the cost of legal aid and juvenile alternative sanctions coordinators as a local requirement.

Counties will also have the option to continue supplemental funding for local services such as drug courts and teen courts.

Clerks of Court will incur costs associated with administration of pro se litigant services. According to the UCA, counties spent \$845,365 in FY 2000-01 for these services.

Clerks of Court will incur costs associated with establishment of accounts receivable systems. Since the exact nature and functionality of these systems is not specified in statute, the potential costs will largely be determined by decisions made by each clerk. According to panelists that participated in a discussion of court related revenues for the House Select Committee on Article V, such systems are commonly available at modest cost.

Clerks of Court will incur costs associated with determining indigency for public defender and other services. The clerks have not provided an estimate of total costs associated with this responsibility.

Local governments will have flexibility for FY 2003-04 only to transfer surplus funds earmarked under current law to teen courts to juvenile drug courts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A filing fee of \$50 will be imposed on all reopened cases. In addition, the cap on most civil filing fees will be allowed to go up to \$250 and most statutorily authorized service charges collected by clerks will be allowed to be increased by up to 50%.

In total, court system users are projected to provide for \$425 million to \$440 million toward the costs of the Clerks of the Court and other components of the state court system. This amount may increase over time given the ability of the clerks to raise maximum fees based on the rate of inflation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Since the purpose of the bill is to reallocate funding responsibilities for the court system between the state and counties, there are a number of provisions throughout the bill that touch on these issues. Overall the bill would provide for a net savings to counties. Counties reported spending \$777 million for FY 2000-01 for costs of the state courts system. The bill should provide relief of approximately \$495 million in the aggregate, which sum would be reduced by

the cost of paying filing fees in cases to enforce ordinance violations of approximately \$23.8 million.

Costs on pleas of guilty or nolo contendere: Pursuant to s. 938.05, F.S., counties receive funds in the form of costs imposed on any person who pleads nolo contendere to a local misdemeanor or criminal traffic offense or pleads guilty or nolo contendere to a state felony, misdemeanor, or criminal traffic offense. The cost is \$200 for felonies and \$50 for misdemeanors and criminal traffic offenses. These funds have been deposited into special trust funds of the counties and were used to reimburse counties for the actual costs they spend on state attorney and public defender operations, and for operations of the medical examiner and victim-witness programs.

The bill redirects these costs to the General Revenue Fund. The items for which the subject funds could be used will, however, become state-funded. Therefore, there will be an offsetting effect. Currently, county governments take in \$14 million through this source. State funding of the items for which the funds could be used must be increased to offset any negative fiscal impact and should thereby not result in a significant fiscal impact.

Teen court: There is currently authority for counties to impose a \$3 cost in cases of a guilty or nolo contendere plea to any state, county, or municipal crime if the county has established a teen court. These funds may be used for the operation of the teen court. The bill provides that counties that have established teen courts are authorized to fund them through local means, but removes the authority to impose a fee on pleas in order to do so.

This section reduces the authority of counties to raise revenues but allows the counties to fund teen courts if they choose to do so with local funding.

Filing fees: Currently, county commissions are authorized to levy add-ons to the filing fees for circuit and county court filings. The authority to impose local filing fees is transferred to the clerk of court; i.e., from one county entity to a different county entity, therefore it does not reduce the authority of the county to raise revenue. Further, clerks may generate as much as \$173 million annually from this source.

Public defender liens: Defendants who have pled guilty or nolo contendere and who were defended by the public defender are liable for attorney's fees and costs for the defense. These fees and costs become a lien on the defendant's real and personal property (or, in the case of a minor, the parents of the defendant). Funds collected for the reimbursement of public defender fees and costs are currently remitted to the county for deposit in the county's fines and forfeitures fund to defray the expenses incurred by the county in defending criminal prosecutions. This amounts to a sum of \$2.4 million statewide.

The bill redirects the funds to the state Indigent Criminal Defense trust Fund. This change does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

Mediation and arbitration: County commissions are authorized to levy a surcharge up to \$5 on circuit court and county court proceedings for mediation and arbitration programs within the county and a surcharge of up to \$45 on petitions for modification of a final judgment in divorce cases.

The bill, instead, levies these amounts as a state charge, with the funds deposited in the General Revenue Fund. Counties report \$4.3 million in collections for mediation and arbitration programs. Offsetting this amount, however, the state will assume the responsibility to provide mediation and arbitration services and should result in an insignificant fiscal impact over the long term.

2. Other:

The bill creates the Article V Indigent Services Advisory Board, one of the purposes of which is to review current statutory fee caps for payment of court-appointed counsel. In *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986), the Florida Supreme Court found “fee maximums unconstitutional when applied to cases involving extraordinary circumstances and unusual representation.” The Court ruled that “in extraordinary and unusual cases” the court may depart from the statute’s fee guidelines “when necessary in order to ensure that an attorney who has served the public by defending the accused is not compensated in an amount which is confiscatory of his or her time, energy and talents.”

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES