

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: SB 0034-A

SPONSOR: Senators Smith and Senator Villalobos

SUBJECT: Judicial Branch of Government

DATE: May 13, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews/Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill continues the 4-year phase-in legislative implementation of the constitutional Revision 7 to Article V (relating to the judicial branch) of the Florida Constitution begun in 2000. Revision 7, adopted by the voters in 1998, requires the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. Specifically, the bill makes some of the following major changes:

- Delineates state and county funding responsibilities for the state courts system, the offices of the state attorney, the offices of the public defender, and the local requirements and other court-related functions performed by the clerks of the court.
- Circumscribes the scope of prosecution by state attorneys and defense by public defenders and private court-appointed counsel and prescribes the process for compensation.
- Prescribes methodologies and processes for selection, appointment and compensation of court-appointed counsel including the establishment of a rotating registry of qualified attorneys.
- Reconstitutes existing circuit conflict committees into 4-member circuit Article V indigent services committees responsible for the management or the appointment and compensation of court-appointed counsel within the circuit and for the maintenance or the registry of private court-appointed counsel unless procuring counsel through a competitive bidding process.
- Creates a 12-member Article V Indigent Services Advisory Board whose responsibilities include recommending qualifications for authorized state-funded due process services including eligibility and performance standards for court-appointed counsel, recommending adjustments to compensation standards for court-appointed counsel and other providers of due process services, identifying due process services for indigents, recommending

statewide contracting standards for procurement of such services, and advising the Legislature on strategies and policies for cost-containment.

- Expands the duties and powers of the Justice Administrative Commission.
- Establishes a 9-member Clerk of Court Operations Conference as a review and advisory body with authority to recommend changes to court-related service charges, fines and fees, to receive, review and approve clerks' court-related projected revenues, court projected revenues and budgets, to certify budget deficits, to develop accountability and performance standards and to publish and adjust fee schedules.
- Authorizes increases of filing fees up to new statutory caps depending on nature or amount of claim and increases service charges for civil actions including probate proceedings and county actions.
- Delineates and expands substantially the duties of the clerks of the court including collection and submission of revenues sufficient to support court-related functions and the operations of their offices, the provision of ministerial assistance solely to pro-se litigants, and the submission of various reports including budget reports.
- Delineates the responsibilities or role of the courts in issues relating to indigence, collection of costs and fees, jury management, selection, and process.
- Revises various provisions affecting local government finances including replacing the local option county levy to fund in part mediation and arbitration services with a statewide mandatory \$1 filing fee on all circuit and county court proceedings, redefining guaranteed entitlement for municipalities, revising the authority to pledge state-shared revenue, and expanding the use of discretionary sales surtaxes.
- Transfers the responsibility to approve parenting courses for divorcing parents from the judicial circuit to the Department of Children and Family Services.
- Creates a statutory cause of action for civil enforcement of violations of municipal or county ordinances in which the county or municipality would be the plaintiff.
- Adjusts court fines, fees, costs and service charges and redirects other court fines, fees, costs and service charges from the counties to the state and the clerks of the circuit court in order to implement Revision 7 at the state level.
- Directs the Department of Financial Services to undertake a review of and make revisions to the Florida Accounting Information Resource subsystem and the Uniform Accounting System Manual made necessary as a result of Revision 7.
- Directs the Chief Financial Officer to conduct a study to determine county expenditures for court-related services for fiscal year 2001-2002 and provides for a \$200,000 appropriation from the Insurance Regulatory Trust Fund to support the study.

This bill substantially amends the following sections of the Florida Statutes: 25.073, 25.383, 25.384, 43.35, 27.02, 27.04, 27.15, 27.25, F.S., 27.34, 27.35, 27.51, 27.52, 27.53, 27.5301, 27.54, 27.562, 27.58, 27.702, 28.101, 43.195, 28.24, 28.2401, 28.241, 28.245, 29.001, 29.004, 29.005, 29.006, 29.007, 24, ch. 2000-237, 29.008, 34.032, 34.041, 34.13, 34.171, 34.181, 34.191, 39.0134, 39.4075, 39.815, 40.02, 40.29, 40.30, 43.16, 43.26, 44.108, 49.10, 55.10, 55.141, 55.505, 57.081, 57.085, 61.14, 61.181, 61.21, 77.28, 92.153, 92.231, 914.09, 125.69, 142.01, 142.02, 142.03, 142.15, 142.16, 145.022, 197.532, 197.542, 197.582, 212.055, 212.20, 218.21, 218.25, 218.35, 318.15, 318.18, 318.21, 318.325, 322.245, 327.73, 382.023, 392.55, 392.56, 394.473, 395.3025, 397.334, 712.06, 713.24, 721.83, 741.30, 744.3135, 744.365, 744.3678, 775.083, 796.07, 914.11, 916.107, 916.15,

938.01, 938.03, 938.05, 938.06, 938.19, 938.27, 938.29, 938.30, 938.35, 939.06, 939.08, 939.12, 947.18, 948.03, 960.001, 984.08, 985.203, 985.215, 985.231, and 985.233.

The bill creates the following sections of the Florida Statute: 27.40, 27.42, 27.5303, 27.5304, 28.215, 28.2402, 28.246, 28.345, 28.35, 28.36, 28.37, 29.0085, 29.0095, 29.014, 29.015, 29.016, 40.001, and 162.30.

The bill repeals the following sections of the Florida Statutes: 25.402, 27.005, 27.006, 27.271, 27.33, 27.3455, 27.36, 27.385, 27.605, 29.002, 29.003, 29.009, 29.011, 34.201, 43.28, 50.071, 57.091, 218.325, 914.06, 925.035, 925.036, 925.037, 939.05, 939.07, 939.10, and 939.15.

The bill reenacts the following section of the Florida Statutes: 943.053, F.S.

II. Present Situation:

In 1998, a proposal by the Constitution Revision Commission¹ to amend Article V of the Florida Constitution was adopted by the voters. The essence of Revision 7 to Article V provides for the funding reallocation and cost-shifting of the state court system among the state, the 67 counties and users of the system. Specifically, the pertinent part reads as follows:

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.

¹ 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.

(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 phase-in schedule for the funding provisions in Article XII, section 22,² as to be determined by general law, to be fully completed by July 1, 2004. In 2000, the Legislature enacted chapter 2000-237, Laws of Florida, to begin implementation of Revision 7.³ Chapter 29, Florida Statutes, provides 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 follows⁴:

- 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.

² See 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.

³ See CS/SB 1212 (2000)

⁴ 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 follows⁵:

- 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.

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 follows⁶:

- 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.

The 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

⁵ *See* 29.001(1), 29.005 and 29.006, F.S.

⁶ *See* s. 14, article V of the *Florida Constitution*.

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.

Appointed Counsel: 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

Each judicial circuit has a conflict committee comprised of the following members: 1) The chief judge or his or her designee; 2) One representative from the board of county commissioners; and 3) The public defender.⁷ The conflict committee is responsible for selecting and approving attorneys who are eligible for appointment as a special assistant public defender. The Circuit Conflict Committees are required to meet at least once a year.

In 2000, the Legislature authorized the creation and funding for pilot projects to reimburse three designated counties --Polk, Hillsborough and Miami-Dade-- for reasonable and necessary conflict counsel fees, expenses, and costs.⁸ These counties were charged with instituting cost containment and accountability processes, and providing a detailed report to the Governor, to the Legislature, and the Joint Legislative Committee on Article V⁹. 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.¹⁰

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). However, 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

⁷ *See* s. 925.037, F.S.

⁸ *See* ch. 2000-237, Laws of Florida.

⁹ 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.

¹⁰ 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>.

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:

Section 1 amends s. 25.073, F.S.,¹¹ to change the definition of the terms “retired justice or judge” for purposes of qualifying for temporary assignment and compensation. A former justice or judge who is defeated when last seeking election to judicial office is no longer eligible for temporary duty.

Section 2 amends s. 25.383, F.S., to remove provisions relating to fees set by the Florida Supreme Court for the issuance and renewal of certification of court reporters.

Section 3 amends s. 25.384, F.S.,¹² to provide for the use of the Court Education Trust Fund to include training of judges and education, and training of other court personnel to be defined and determined by the Florida Court Educational Council. This section is effective July 1, 2004.

Section 4 renames part I of chapter 27, F.S., from “Definitions; Court Reporters” to “Court Reporters; Witness Coordination.” Sections 27.0055, 27.006, 27.0061, and 27.0065, F.S., are designated as part I.

¹¹ The chief justice of the Supreme Court of Florida is authorized by section 2 of Article V of the Constitution of the State of Florida, to appoint retired judges to temporary duty in any court for which the judge is qualified to serve. Florida Rules of Judicial Administration define a retired judge or “senior judge” as a judge or justice who is not engaged in the practice of law, who has been a judicial officer of this state and who complies with the requirements the Supreme Court deems necessary to the recall as a retired judge or justice. Rule 2.030(a)(3)(A), Florida Rules of Judicial Administration, provides that retired judges or justices assigned to temporary duty will be compensated as provided by law. Currently, a retired justice or judge for purpose of service, compensation and expenses is one who is not practicing law and who in his or her last judicial office was not defeated in seeking reelection or who was not retained when seeking retention during a retention election. Upon receipt of an application to become a “retired judge” or “retired justice,” the court will submit the applicants’ name to the Judicial Qualifications Commission to determine if there is any reason why the applicant should not be approved as a retired judge or justice. After receiving a favorable response from the Judicial Qualifications Commission, the court will consider the application in conference for approval or disapproval. The judge or justice will be notified of their acceptance for service as a retired judge or justice and they are then eligible for appointment by a chief judge of a circuit court or district court of appeal. Once approved a retired judge or justice has specific responsibilities and authority. The retired judge must maintain membership in good standing in the Florida Bar and must complete 30-hours of continuing judicial education every three years. While a person serving as a retired judge may not practice law, the supreme court in an April 12, 1985 conference did approve retired judges or justices to be employed as arbitrators, masters, referees, and court commissioners as well as authorizing them to perform other types of state or federal judicial or quasi-judicial service that does not include the practice of law.

¹² This section currently provides for the creation and administration of the Court Education Trust Fund in the Florida Supreme Court. The trust fund receives fees assessed pursuant to ss. 28.241(1) and 28.2401(3), F.S. (currently \$2.50 from each fee assessed). These funds are used for judicial education for judges, staff of the State Courts Administrator, trial court administrators, and appellate court law clerks. The funds may also be used for educational programs for court clerks. The Supreme Court, through its Florida Court Educational Council, is responsible for the operation of the trust fund, and must submit a report each October 1 to the President of the Senate and the Speaker of the House of Representatives on the personnel trained and the funds expended and remaining in the trust fund.

Section 5 transfers existing section s. 43.35, F.S., renumbers the section as s. 27.006, F.S., and renames the section from “witness coordinating offices” to “witness coordination.” It is further revised to transfer the responsibility for such coordination from the court administrator to each state attorney and public defender. This section is effective July 1, 2004.

Section 6 amends s. 27.02, F.S., relating to duties of state attorneys before the court, to prohibit their prosecution of violations of special laws unless expressly authorized, or violations of county or municipal ordinances unless ancillary to a state prosecution and authorized by the county’s prosecuting attorney. This section requires a state attorney to provide all discovery materials to the defendant pursuant to the applicable rule of procedure and to authorize a fee charge as provided in s. 119.07(1)(a), F.S. The fee charge may not exceed \$0.15 per page for a copy of a non-certified copy of a public record. Such fees may be deferred for indigent defendants under this provision. This section is effective July 1, 2004.

Section 7 amends s. 27.04, F.S., relating to the summons and the examination of witnesses, to reflect that such witnesses may be summoned and examined in relation to civil matters as well as criminal matters.

Section 8 amends s. 27.15, F.S., relating to assistance by state attorneys in other circuits per the Governor’s direction, to specify that expenses incurred attributable to that executive assignment are to be paid from state monies appropriated to that state attorney who is being assisted rather than from 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 that is obligated to pay the expense but for the executive assignment.

Section 9 amends s. 27.25, F.S., relating to the state attorney’s hiring authority, to specify that such authority is circumscribed by what is authorized in the General Appropriations Act, and that the scope of personnel that may be hired is defined by s. 29.005, F.S. This section is effective July 1, 2004.

Section 10 amends s. 27.34, F.S., to impose limits on what counties or municipalities can pay towards the salary and other related costs of state attorneys within their judicial circuit. It prohibits contracts, appropriations or contributions by a county or municipality for the purpose of paying a state attorney to prosecute a violation of a county’s or municipality’s special law or ordinance. A county or municipality is no longer allowed to appropriate or contribute 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 county’s or municipality’s boundaries. Existing subsection (2) which enumerated those items to be provided or paid by the counties to state attorneys is eliminated. The term “Chief Financial Officer” replaces the term “Insurance Commissioner” to reflect recent constitutional changes in the names and positions of cabinet officers. It also specifies that the Chief Financial Officer must pay for the cost of a state attorney contracted to prosecute criminal violations of the Workers’ Compensation Law. This section is effective July 1, 2004.

Section 11 amends s. 27.35, F.S., to provide for the specific salaries of state attorneys by reference to the General Appropriations Act rather than the salaries set by statute as currently exists.

Section 12 renames Part III of chapter 27, F.S., as “Public Defenders and Other Court-Appointed Counsel” in lieu of “Public Defenders” and designates the sections 27.40 -27.59, F.S., under this part. This section is effective July 1, 2004.

Section 13 creates s. 27.40, F.S., relating to court-appointed counsel, the establishment of circuit registries and requirements for qualifying for the registry. It provides that court-appointed counsel, whether a public defender or private counsel, shall be appointed to any individual in a civil or criminal proceeding when such representation is required by federal or state law or under the Federal or State constitution. In those cases where a public defender is unable or unauthorized to represent a person, private counsel must be appointed either from a rotating registry established by the circuit Article V indigent services committee, or through a competitive bid process. The Justice Administrative Commission is required to issue quarterly statewide reports on circuit-to-circuit expenditures to these committees and the Legislature. Funding appropriations are broken down into categories. This section provides the manner of transferring files and documents to a successor court-appointed attorney. A circuit Article V indigent services committee or any interested person may report to the court any irregularities or improprieties affecting the quality of representation. This section is effective July 1, 2004.

Section 14 creates s. 27.42, F.S., to establish a circuit Article V indigent services committee in each judicial circuit, which shall consist of the chief judge as the chair, the public defender, an experienced criminal defense attorney, and an experienced civil trial attorney. The latter two are appointed by the chief judge to serve a two-year term and are prohibited from serving as court-appointed counsel during their term. The committee’s responsibilities are as follows:

- Manage the appointment and compensation of court-appointed counsel within the circuit,
- Maintain the registry of counsel in accordance with the eligibility and performance standards set by the Legislature based on recommendations from the Article V Indigent Services Advisory Board, unless procuring counsel through a competitive-bidding process.
- Develop a schedule of standard fees and expense allowances consistent with standards adopted by the Legislature after receiving recommendations by the Article V Indigent Services Advisory Board.
- Meet at least quarterly.

The Justice Administrative Commission must submit to the Legislature a quarterly statewide report comparing expenditures to budgeted amounts among the circuit Article V indigent services committees.

This section sets out the appropriation mechanism for funding of JAC’s funding and positions, for funding for criminal conflict cases, for conflict cases under chapter 394, F.S., and for funding in child dependency and other cases involving court-appointed counsel. This section is effective July 1, 2004.

Section 15 amends s. 27.51, F.S., relating to duties of public defenders regarding representation of indigent persons in specified cases. It makes conforming changes to reflect that the public defender’s duties no longer include representation of an indigent person for violations of municipal or county ordinances. 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.¹³ It replaces statutory cross-reference to s. 925.035, with cross-reference to ss. 27.40 and 27.5303, F.S., relating to court-appointed counsel and conflict counsel. This section is effective July 1, 2004.

Section 16 amends s. 27.52, F.S., to revise the process for determining indigence. The clerk of the court, in lieu of an indigence examiner or the court, makes the determination of indigence upon application for purposes of appointment of counsel or for other court-related services. A clerk's determination denying indigence may be judicially reviewed at the next scheduled hearing. The poverty threshold for indigence is revised from 250 percent to 200 percent below the federal poverty guidelines.

As is current law, a \$40 application fee is required at the time the supporting financial affidavit is filed. A new provision provides that if the fee is not paid within 7 days of submitting the application, the applicant is automatically enrolled in a payment program. This reflects a change from current law which allows for the fee to be assessed at final disposition or sentencing. This section is also amended to reflect that appointment of a public defender or private counsel may occur in a civil as well as a criminal matter.

This section also lifts a 2-year statute of limitations to allow a state to proceed against a false or erroneous claim of indigence at any time. Any amount recovered in such proceeding must be remitted to the Department of Revenue, in lieu of the board of county commissioners, for deposit into the General Revenue Fund.

A new provision allows an "indigent person" to defer fees, costs, and charges by enrolling in the clerk's payment program allowing for periodic payment. This section is effective July 1, 2004.

Section 17 amends s. 27.53, F.S., relating to the appointment and hiring of assistants and other staff of the public defenders, to specify that the public defender's authority to hire is circumscribed by what is authorized in the General Appropriations Act, and that the scope of personnel that may be hired is defined by s. 29.006, F.S. This section also clarifies that special assistant public defenders are members of the Florida Bar, in good standing, who volunteer to represent indigent defendants, rather than register their 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. Subsection (3), relating to conflicts arising from representation of two or more indigents, is eliminated as this provision is replaced in another part of the bill which creates section 27.5303, F.S. This section is effective July 1, 2004.

Section 18 amends s. 27.5301, F.S., relating to the salaries for public defenders and assistant public defenders, clarifies that such salaries are to be provided as set forth in the General Appropriations Act.

Section 19 creates s. 27.5303, F.S., relating to public defenders and conflicts of interest. This section substantially revises the current process for conflict of interest and withdrawal of

¹³ This provision was contained in the Death Penalty Reform Act (DPRA) of 2000 which was declared unconstitutional by the Florida Supreme Court in [Allen v. Butterworth, 756 So.2d 52 \(Fla.2000\)](#).

representation in the representation of two or more indigent persons. As is current law, the public defender must move to appoint another counsel if the interests of such indigent clients are so adverse or hostile or that none can be counseled because of conflict of interest. In a departure from current law, the Justice Administrative Commission is given standing to contest, upon its own discretion, any such motion and may contract with other public or private entities for the purpose of contesting such motion. As is current law, the court must review and may conduct a hearing into the adequacy of the public defender's representation regarding a conflict of interest without requiring the disclosure of confidential communications. As is current law, the motion to withdraw may not be granted if the asserted conflict is not prejudicial to the indigent person. Additionally, the court may not grant such motion if the grounds for withdrawal are insufficient, or if solely based on inadequacy of funding or excess workload.

As is current law, the court must appoint another counsel when the facts developed upon the face of the record and the court files disclose a conflict of interest. Copies of the appointment along with the basis for the conflict that are submitted to the appropriate public defender and the clerk of the court must now additionally be sent to the Justice Administrative Commission, if the Commission so requests. The standards for determining whether there is a conflict of interest shall be legislatively established standards based on recommendations to be received from the Article V Indigent Services Advisory Board. An appointed attorney representing a death penalty defendant must continue representation through appeal to the Florida Supreme Court, unless unable to handle the appeal, and compensated as set forth in the new section 27.5304, F.S. Similarly, a public defender or appointed conflict counsel, may be appointed to represent the indigent person in an executive clemency petition from the execution of a death penalty judgment. When an appointed counsel in a capital case has completed his or her duties, such counsel must file a written report with trial court and apply for discharge. This section is effective July 1, 2004.

Section 20 creates s. 27.5304, F.S., relating to the appointment and compensation of private court-appointed counsel. Compensation of private court-appointed counsel shall be paid in accordance with legislatively-established standards, subject to statutory limits, based on recommendations by the Article V Indigent Services Advisory Board and subject to court approval. Prior to the filing of a motion for attorney's fees and costs, the supporting documentation for such motion must be submitted to the Justice Administrative Commission for review. The Commission must relay any objection to the proposed reimbursement to the private-appointed counsel. The Commission is to receive a copy of the motion and attachments upon filing and is given standing to contest, upon its own discretion, any motion to approve the reimbursement of attorneys fees and costs. As with a motion for withdrawal based on a conflict of interest, the Commission may contract with private or public entities to challenge a motion for reimbursement of attorney's fees and costs. The court retains primary authority and responsibility for approval of such fees and costs subject to statutory limits.

The Article V Indigent Services Advisory Board is to make legislative recommendations to adjust existing compensation schedules for criminal proceedings and to proposed compensation schedules for representation by private attorneys in civil proceedings. The current statutory limits are retained:

- \$1,000 for representation in misdemeanor matters and of juveniles at the trial level.

- \$2,500 for representation in noncapital, nonlife felonies at the trial level
- \$3,000 for representation for life felonies at the trial level
- \$3,500 for representation of capital cases at the trial level
- \$2,000 for representation at the appellate level
- \$1,000 for representation of a clemency petition by a person whose death sentence is affirmed (such compensation is to be drawn from the general revenue funds budgeted to the Department of Corrections)
- \$1,000 for representation in a termination of parental rights matter at the trial level
- \$2,500 for representation in a termination of parental rights matter at the appellate level

Such private court-appointed counsel is not permitted to reassign or subcontract the case to another attorney or to allow appearance by another attorney at a critical stage who does not otherwise meet the statutory standards for representation.

By January 1, 2004, the Board must submit adjustments to the existing statutory compensation schedule for any criminal matters and any proposed compensation standards for private attorneys providing representation in civil proceedings where private counsel is appointed. This section is effective July 1, 2004.

Section 21 amends section 27.54, F.S., relating to expenditures for the public defender office, to prohibit 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, unless expressly authorized, or with violations of county or municipality ordinances unless ancillary to a state prosecution. 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 required the counties to provide certain space, items and services to the public defenders. This section is effective July 1, 2004.

Section 22 amends s. 27.562, F.S., relating to the disposition of attorneys' fees and costs collected pursuant to s. 938.29, F.S., for the representation of a person by a public defender or private court-appointed counsel. These monies, with the exception of indigence application fees, are redirected from the counties to the state for deposit into the General Revenue Fund. This section is effective July 1, 2004.

Section 23 amends s. 27.58, F.S., relating to the administration of public defender services to clarify that the public defender of each judicial circuit is deemed the chief administrator of all public defender services as authorized under s. 27.51. This section is effective July 1, 2004.

Section 24 amends section 27.702, F.S., relating to the duties of a capital collateral regional counsel, to conform to changes relating to the determination of indigence by the clerk of the court. This section is effective July 1, 2004.

Section 25 amends s. 28.101, F.S., relating to petitions and records of divorces, to increase the service charge cap from \$7 up to \$10.50 for the filing of a divorce judgment. This section is effective July 1, 2004.

Section 26 transfers existing s. 43.195, F.S., and renumbers it as s. 28.213, F.S., as relates to the disposal of physical evidence and exhibits after three years. It prohibits such disposal if there is a pending collateral attack. Current law already prohibits disposal if there is an appeal. This section is effective July 1, 2004.

Section 27 creates s. 28.215, F.S., to require the clerk of the court to provide solely ministerial assistance to pro-se litigants.

Section 28 amends s. 28.24, F.S., relating to schedule for service charges that may be imposed by the clerks of the circuit court for access, copies, preparation, authentication, recording, sealing of documents and other related services. It lifts the prohibition against the clerk of the court charging the county for recording documents and instruments. Various service charges are increased. It requires the clerk of the circuit court to provide copies of public records at no charge to any judge, justice, state attorney, or public defender. Fees are eliminated for court attendance by each clerk or deputy clerk per day, for court minutes per page, for reporting juror payrolls to State Comptroller, and for issuing venire facias (juror summons). This section is effective July 1, 2004.

Section 29 amends s. 28.2401, F.S., to increase various services charges that may be imposed by the clerk of the court for probate matters and to prohibit counties from imposing additional charges. It also revises provisions reflecting recent revisions to the Probate Code.¹⁴ This section is effective July 1, 2004.

Section 30 creates s. 28.2402, F.S., to impose a \$200 fee on a county or municipality when it files an action for violation of a municipal code or ordinance in court. The fee is to be paid to the clerk of the court for performing court-related functions. This section is effective July 1, 2004.

Section 31 amends s. 28.241, F.S., to provide that in any action to reopen a civil matter between July 1, 2003, and June 30, 2004, a \$50 fee must be assessed and collected. Forty-nine dollars of the \$50 fee is directed to the Department of Revenue for deposit into the General Revenue Fund and \$1 is retained for administrative costs. If the reopened case is one for modification of a final judgment of divorce, the fee is \$49 based on the \$1 filing fee already paid pursuant to s. 44.108, F.S.

Section 32 further revises s. 28.241, F.S., as amended by this bill, for the subsequent year by increasing the filing fee from \$40 to a cap of \$250 in civil matters with 5 or less defendants and assessing up to \$2 for each additional defendant which is to be paid to the clerk of the court. The first \$57.50 of the filing fee is to be distributed as follows:

- \$50.00 to the Department of Revenue for deposit in the state General Revenue Fund

¹⁴ See ch. 2001-226, Laws of Florida. Part I of chapter 735, F.S., relating to family administration as an option for small estates in which the spouse or lineal descendants or ascendants are the sole survivors in an intestate estate, or testate estate, in which the value of the gross estate did not exceed \$60,000, or in which all creditor claims to property in the estate had been processed or otherwise barred. In its stead, the law increased the jurisdictional amounts for summary administration of small estates from \$25,000 to \$75,000 under chapter 735, F.S., and for ancillary administration of small estates for nonresidents from \$25,000 to \$50,000, under chapter 734, F.S.

- \$05.00 to the Clerk of Court Operations Conference
- \$02.50 to the clerk of the court for deposit into the Court Education Trust fund
- One-third of filing fees (collected above the \$57.50) to the Department of Revenue for deposit in the Clerks of the Court Trust Fund

The fee for severance of a party from other parties in an action is raised from \$10 to a cap of \$15. The filing fee assessed for proceedings of garnishment, attachment, replevin, and distress is increased from the mandatory \$35 to a discretionary fee no more than \$75.

The bill eliminates the county's authority to assess amounts in excess of specified service charges by special law or ordinances which were used to fund facilities, law libraries, equipment maintenance, legal aid programs, and public guardian programs. The bill prohibits additional service charges or fees other than those specified in law. In addition, the fee for reopening a civil action shall be no more than \$50 and a reopened case for purposes of this section will also include a petition for modification of a final judgment for divorce. The bill eliminates subsection (2) which provided specific service charges as applied to juvenile proceedings. It increases the service charge for instituting an appellate proceeding from \$75 to \$250. This section is effective July 1, 2004.

Section 33 amends s. 28.245, F.S., relating to the transmittal process for funds to the Department of Revenue, to require the electronic transmission of funds collected from the clerk of the court to the designated state agency, the Department of Revenue, in lieu of the Florida Supreme Court. This section is effective July 1, 2004.

Section 34 creates s. 28.246, F.S., to require the clerk of the court to report to the Legislature and Clerk of Court Operations Conference the total amount of service charges and fees assessed, waived, and collected, beginning July 1, 2003. The section allows for partial payment of court-related fees to the clerk and sets a distribution order for collected charges and fees. The order of distribution of partial payments is as follows: 1) monies for the clerk and the state for deposit into the General Revenue Fund, 2) monies for the various authorized funds on a pro rata basis if the funds are insufficient to fund all such funds, and 3) monies payable to the counties, municipalities, or other local entities, allocated on a pro rata basis if insufficient to fund all recipients. The clerk of the court is authorized to retain up to 1 percent of all collection of fees, service charges, court costs, and fines payable to other entities.

The clerk of the court is also authorized to pursue collection directly or refer unpaid collections to a private attorney or registered collection agent in accordance with applicable procurement practices.

Section 35 creates s. 28.345, F.S., to exempt state attorneys and public defenders from the fees and charges that may be assessed by the clerks of the circuit courts.

Section 36 creates s. 28.35, F.S., to establish the Clerk of Court Operations Conference. The Conference shall consist of the Chief Justice of the Florida Supreme Court or his or her designee and 8 clerks who shall a two-year term. The duties of the Conference are to: 1) recommend legislative changes to court-related service charges, fines, and fees; 2) establish a process for review and approval of individual clerk of the court projected revenues and budgets; 3) establish

a process for certification of deficits by individual clerks of the court whose expenditures exceed their revenues; 4) develop a performance accountability and standards system; and 5) publish a schedule of statutory fees, fines and charges, as authorized by law. After October 1, 2005, and annually thereafter, the schedule may be adjusted by the average percentage change in the Consumer Price Index issues by the United State Department of Labor. The adjustment must be approved by a majority of the clerks of the circuit courts before it can take effect.

The Conference is required to set up a fund for deposits and such deposited monies shall be available for pay for complying with its duties and responsibilities under the law including hiring staff and paying for other expenses. The Conference must submit annual audited financial statements to the Auditor General. The Auditor General must conduct annual audits of the conference's operations and use of funds.

Section 37 creates s. 28.36, F.S., to set up the budget review and budget process for the clerks of the court. This section requires the clerks of the court to provide a balanced budget where revenues meet or exceed expenditures to the Clerk of Court Operations Conference. The bill requires a special budget be submitted on May 1, 2004 for the period July 1, 2004 through September 30, 2004. Thereafter, the budget submitted annually by August 1 for the period of October 1 through September 30 of the following year. The Conference must approve the court-related budget for each clerk and certify annually the proposed budget to the Legislature.

A process is provided to report and remedy a deficit encountered by a clerk of court in any county as follows:

1. The clerk of the court must report a budget deficit to the Conference. If the Conference determines that the clerk of the court is meeting performance, the clerk must then increase fines and fees up to the statutory cap or up to an amount necessary to meet the deficit, whichever is less.
2. If the deficit continues after the increase, the Conference must certify the deficit to the Department of Revenue that the clerk is authorized to retain revenues necessary to fully fund the projected deficit.
3. If the deficit continues after the retention of these revenues, the Conference must certify the deficit amount to the Chief Financial Officer whereupon an amount equal to the deficit is to be appropriated annually from the Department of Revenue Clerks of the Court Trust Fund until altered or revoked by the Legislature. Such deficit amount is to be distributed monthly to the clerk certified to have a deficit.

The Conference is required to notify the Governor and Legislature regarding any actions taken in this section including certification that all conditions precedent have been met.

The bill allows for contingency reserve fund not to exceed 10 percent of budget. For the county fiscal year October 1, 2004 through September 30, 2005, the annual increases in each clerk's budget may not exceed the greater of 103% over the prior year or the projected percent increase in revenues for the coming year. The bill provides a schedule for the maximum allowable budget amount for each specified fiscal year through 2008-2009 and thereafter. These limitations may be exceeded only if authorized by law for any given year. The Conference can submit proposed legislation with supporting documentation to authorize approval for amounts in excess of the maximum budgetary amounts set by statute.

Section 38 creates s. 28.37, F.S., to provide a statutory framework for the submission of all revenues collected with specified exceptions to the State. It is stated that a portion of these revenues (derived from fines, fees, service charges, and costs) will be used to pay for selected salaries, costs and expenses of the state courts system and court-related functions. Beginning August 1, 2004, unless otherwise provided in ss. 28.241 and 34.041 one-third of such collected revenue shall be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund. This amount is exclusive of funding received for the operation of the Title-IV D child support program.

Beginning January 1, 2005, for the period July 1, 2004 for through September 30, the cumulative excess of all statutory fines, fees, service charges, and costs collected must be deposited annually in the state General Revenue fund for the purpose of paying selected expenses of the state court system. The Department of Revenue is required to adopt rules and procedures for collecting these funds from the clerks.

Section 39 amends s. 29.001, F.S., relating to the state courts system. It removes intent language and changes 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. It deletes language regarding the counties’ financial responsibility for the payment of all reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements which are set forth elsewhere in the bill. This section is effective July 1, 2004.

Section 40 amends s. 29.004, F.S., to enumerate the elements of a state court system and to specify that such elements are to be funded by state revenues appropriated by general law. Changes to the existing statutorily listed elements of the state courts 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.
- Construction or lease of facilities, maintenance, utilities, and security for the appellate courts and the Florida Supreme Court is unchanged and retained as an element.
- Auxiliary aids and services are deleted as an element.

The following elements of the state courts system are added: court expert witnesses with certain conditions, judicial assistants, law clerks, and resource materials; masters and hearing officers; court administration; case management; mediation-alternate dispute resolution with certain conditions; basic legal materials reasonably accessible to the public other than a public law library, the Judicial Qualifications Commission; the offices of the appellate clerks and marshals and appellate law libraries. 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. This section is effective July 1, 2004.

Section 41 amends s. 29.005, F.S., relating to state attorneys' offices and prosecution expenses, to make the conforming change to refer to "elements" in lieu of "essential elements" and to provide that such elements of these offices will be paid from state revenues appropriated by general law. Existing elements listed are changed 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 include: 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 42 amends s. 26.006, F.S., relating to public defenders and indigent defense costs, to refer to "elements" in lieu of "essential elements" and to state that such elements will be funded from state revenues appropriated by general law. Changes to the statutory 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 include: 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 43 amends s. 29.007, F.S., to specify further the elements of court-appointed counsel for purposes of funding from state revenues appropriated by general as applied to court-appointed counsel. Court-appointed counsel to include by cross-reference those counsel appointed pursuant to ss. 27.42 and 27.53, F.S, and that must be appointed in accordance with federal and state constitutional guarantees and additionally as required by federal and state statutes in civil proceedings. "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 include: reasonable pre-trial consultation costs and reasonable travel expenses. Investigating and assessing indigence is deleted as an element. This section is effective July 1, 2004.

Section 44 amends s. 24 of chapter 2000-237, Laws of Florida to revise the effective date of the law as initially passed in July 2000, from July 1, 2003 to July 1, 2004, as relates to the shift in costs borne by the state and the counties in the operations of the state courts system and related components. This section is effective upon this act becoming a law.

Section 45 amends s. 29.008, F.S., to elaborate on the scope of the county's responsibility regarding court-related functions as revised by the definitions to the following terms:

The term "facility" is revised to specify "space", and that such office space provided by the county may not be less than the standards of allotment adopted by the Department of Management Services. These standards may vary if the county and the affected party mutually

agreed to the variation. These administratively set standards of allotment otherwise apply to facilities leased or constructed after June 30, 2003.

The term “construction or lease” includes reasonable and necessary costs of leasing facilities, equipment, and furnishing. It is also clarified that reference to “volunteers” means volunteers of a tenant agency. Effective July 1, 2005, the county’s responsibility for equipment and furnishings are limited to the “appropriate and customary” for courtrooms, jury facilities, and other public areas in courthouses. All other such furnishings and equipment in existence and owned by the counties are to be transferred to the state at no charge.

The term “utilities” is clarified to mean *all* electricity services enumerated therein.

The term “communications systems or communications services” is reworded as “communications services” and is further revised to include telephone system infrastructure to continue to include computer lines, telephone switching equipment, and maintenance. Wireless communication and long-distance charges are deleted from the list. All other telephone equipment including facsimile and video teleconferencing equipment owned by the counties are to be transferred to the state at no charge by July 1, 2004. Postage, printed documents, radio services, support services, maintenance, supplies and line charges are replaced leaving “courier messenger and subpoena services as part of the definition for communication services. 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 operational and integrated and must at a minimum be able to electronically exchange judicial case background sentencing guidelines and scoresheets and video evidence information stored in integrated case-management systems over secure networks. Auxiliary aids and services necessary to ensure access to the courts by qualified individuals with a disability are added within the ambit of communications services.

The term “local requirements” is defined for purposes of determining the scope of counties’ existing responsibility for the salaries, costs and expenses of the state courts system as needed to meet local requirements. The term “local requirements” is 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 criteria 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. The chief judges must submit annually on June 1 or before to the board of county commissioners a certified budget for local requirements. A county may determine whether to provide funding in accordance with its budgetary procedures, 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. Notwithstanding the foregoing, legal aid programs in counties with populations of 75,000 or more and alternative sanctions coordinators are considered local requirements for purposes of county funding. Counties may satisfy these requirements by entering into interlocal agreements for the collective funding of these salaries, costs and expenses. This section is effective July 1, 2004.

Section 46 creates s. 29.0085, F.S., to require each county to submit an annual certified statement of revenues and expenditures to the Chief Financial Officer, within 6 months of the close of the local government fiscal year for each of the services outlined in s. 29.008. If the Chief Financial Officer determines that an audit is appropriate because the county failed to submit timely the annual statement, there were discrepancies, or the county failed to file before March 31 of each the certified public accountant statement of compliance. If the Chief Financial Officer contracts for independent audit services, the county may be directed to pay such contractor directly. Any funds determined to be owed must be recovered as provided in chapter 17, F.S. The Chief Financial Officer is directed to adopt rules necessary to implement this section. This section is effective July 1, 2004.

Section 47 creates s. 29.0095, F.S., to require annual budget reports from the chief judge, the public defender, and the state attorney of each circuit as relates to their respective expenditures for the elements of the state courts system as listed in s. 29.004, F.S., the offices of the state attorney as listed in s. 29.005, F.S., and the offices of the public defender as listed in s. 29.006, F.S., respectively. These budget reports must be submitted by October 1 to the Governor and the Legislature. Such report must show how state funds were expended during the previous fiscal year ending in June. The budget reports shall be submitted in the form prescribed by the Legislative Budget Commission in consultation with the Chief Justice and the Justice Administrative Commission. This section is effective July 1, 2004.

Section 48 creates s. 29.014, F.S., to establish a 12-member Article V Indigent Services Advisory Board, whose members shall serve for a 4-year term, and consisting of the following persons:

- One state attorney, one public defender, and one clerk of court, all of whom are to be appointed by the Governor.
- One county commissioner, one experienced civil trial attorney, and one unspecified person who may be a legislative member, all of whom are to be appointed by the Speaker of the House of Representatives.
- One county commissioner, one experienced criminal trial attorney, and one unspecified person who may be a legislative member, all of whom are to be appointed by the Senate President.
- Three trial court judges, representing a cross-section of circuits, regions, and court divisions, all of whom are to be appointed by the Chief Justice of the Florida Supreme Court.

The Board must meet at the call of the chair, at the request of the majority membership, or at the request of either the House Speaker or the Senate President. The Justice Administrative Commission shall provide administrative support. The Board's duties include:

- Recommending qualifications for authorized state-funded due process services, which are to incorporate eligibility and performance standards for court-appointed counsel
- Recommending needed adjustments to existing compensation standards for private court-appointed counsel and other providers of due process services
- Identifying due process services for indigents that should be included on the state contract and bid competitively

- Recommending statewide contracting standards for procurement of state-funded due process services and the development of uniform contract forms.
- Advising the Legislature on strategies and policies for cost-containment.
- Recommending uniform standards in the determination of conflict of interest by the court and withdrawal of public defenders.
- Assisting in the transition of implementation of Revision 7 to Article V of the Florida Constitution.

The Board's initial recommendations must be submitted by November 1, 2003, and annually thereafter by September 1. The Board's advice and recommendations may be considered by the Chief Justice and the circuit Article IV indigent services committees when preparing budgets and contracting for due process services.

Section 49 creates s. 29.015, F.S., to establish through the General Appropriations Act a Contingency Fund for the Justice Administrative Commission for contracted due process services. The Fund will serve to alleviate deficits in contracted due process services appropriation categories and extraordinary events that lead to unexpected expenditures. This section provides processes by which deficits are reported and addressed. For example, if there is a deficit in the category for contracted due process services, the state attorney or public defender notifies and addresses a deficit in contracted due process services. The state attorney or public defender must submit a budget amendment identifying any surplus funds that may be redirected to that category. If no surplus fund is identified, such state attorney or public defender must certify to the Justice Administrative Commission the deficit with an explanation of the situation and actions taken to rectify the situation. The JAC shall conduct an inquiry into any potential surplus funds and report a budget amendment. If no surplus funds can be found, the JAC must submit documentation in support thereof of a request for a budget amendment to draw funds from the Contingency Fund, subject to the procedure in chapter 216, F.S., and to legislative review and approval. This same process occurs in the event there is an identified deficit in the statewide contracted due process services appropriation category for private court-appointed counsel due to an ethical conflict, or for private-appointed counsel for reasons other than an ethical conflict. Strict adherence to the statutory restrictions governing transfer of funds is required including a prohibition against transfer of funds from the state attorney office to the public defender's office and vice-versa. This section is effective July 1, 2004.

Section 50 creates s. 29.016, F.S., to establish through the General Appropriations Act a Contingency Fund for the judicial branch to alleviate deficits in contracted due process services appropriation categories including private court-appointed counsel categories that may occur from extraordinary events leading to unexpected expenditures. This section provides processes similar to the previous provision by which deficits are reported and addressed. For example, if there is a deficit in the category for contracted due process services, the chief judge must identify any surplus fund from other appropriation categories and submit a request to the Chief Justice for budget amendment. If no other surplus fund is identifiable, the chief judge must certify the deficit to the Office of State Courts Administrator. The certification must include an explanation of the deficit situation and the actions taken to rectify the situation. OSCA shall conduct an inquiry into any potential surplus funds and report a budget amendment. If other circuits identify surplus funds, OSCA shall notify the Trial Court Budget Commission which shall recommend to the Chief Justice how to alleviate the deficit. The Chief Justice may authorize transfer of the

identified surplus funds among circuits. If the other circuits identify no surplus funds, OSCA must include an explanation of the deficit and steps taken to alleviate the deficit. Funds must be transferred in strict accordance with this section and chapter 216, F.S., and are subject to legislative review and approval. This section is effective July 1, 2004.

Section 51 amends s. 34.032, F.S., relating to the county clerk's power to appoint deputy clerks, to specify that the arrest warrants issued by deputy county clerks for violations of county or municipal ordinances are to be paid by the county. This section is effective July 1, 2004.

Section 52 amends s. 34.041, F.S., to increase the filing fees for filing county civil actions ranging from a cap of \$50 to a cap of \$250 corresponding with the amount of the claim as falling within claims less than \$100, claims between \$100 and \$500, claims more than \$500 but no more than \$2500, and claims more than \$2500. The term "service charges and costs" are replaced with the term "filing fees" as relates to county court actions. It authorizes in lieu of requiring the plaintiff to pay, the clerk of the court to require the plaintiff to pay filing fees which have been increased by the bill to a statutory cap. For all claims above \$2,500, a \$250 filing fee shall be apportioned as follows;

- \$50 to the Department of Revenue for deposit into the General Revenue Fund.
- One-third in excess of the first \$50 to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

The counties may no longer impose by ordinance or special or local any service charge in excess of the fees and charges already set forth in the bill. It removes the statutory cap of \$200 that may be cumulatively assessed for all filing fees and service charges. It deletes provisions relating to a judge's discretion to waive prepayment or payment of costs accruing to the action. It requires a county or municipality, as would any other appealing party, to pay filing fees for appeals from the county court to the circuit court. This section is effective July 1, 2004.

Section 53 amends s. 34.13, F.S., relating to prosecution initiated by an arrest warrant, to conform to changes in which the municipality shall be charged for costs associated with the issuance of a warrant for a violation of municipal ordinance.

Section 54 amends s. 34.171, F.S., to relate solely to the county's responsibility to pay for salaries of the county court bailiffs. Provisions relating to the salaries of secretaries and county and circuit court assistants are deleted. This section is effective July 1, 2004.

Section 55 amends s. 34.181, F.S., relating to branch courts, to conform with requirements made in the bill requiring the county or municipality to provide for appropriate physical facilities in which county court may be held. This section is effective July 1, 2004.

Section 56 amends s. 34.191, F.S., to redirect certain fines and forfeitures other than those collected for violations of municipal ordinances, from the county to the clerk of the court to pay for court-related costs. This section is effective July 1, 2004.

Section 57 amends s. 39.134, F.S., to conform language regarding how court-appointed counsel in a dependency proceeding will be compensated which is now set forth in s.27.5304, F.S. This section is effective July 1, 2004.

Section 58 amends s. 39.0134, F.S., removes language which has the effect of requiring a party to pay for mediation in a dependency action regardless of inability to pay.

Section 59 amends s. 39.815, F.S., relating to an appeal of a termination of parental rights, to conform with changes that cap the attorneys fees for a private court-appointed counsel in an appeal of a termination of parental rights to \$2500. This section is effective July 1, 2004.

Section 60 creates s. 40.001, F.S., relating to jurors, to clarify 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. The clerk of the court is responsible for the processing of jurors. The jury system within each circuit must operate consistent with jury management practices adopted by the Supreme Court. This section is effective July 1, 2004.

Section 61 amends s. 40.02, F.S., relating to selection from jury lists, to transfer authority from the chief judge of the circuit to the clerk of the court relating to duties relating to the jury venire, juror summons, and jury pools under ss. 44.221, 40.23, and 40.231, F.S., respectively. This section is effective July 1, 2004.

Section 62 amends s. 40.29, F.S., to substantially revise this section relating to juror and witness compensation. This section reflects the transfer of authority and power from the Office of State Courts Administrator to the Justice Administrative Commission. It requires the clerk of the court to submit quarterly a projected estimate and requisition for the compensation of certain due process services: jurors, court reporters, interpreter and translator services, witnesses, mental health professionals, private court-appointed counsel in accordance with the applicable requirements of ss. 29.005, 29.006, and 29.007. This represents a significant change from the current version of this law which does not refer private court-appointed counsel, interpreter and translator services, and which applies to a narrow field of expert witness as being only those mental health professionals appointed in connection with indigents subject to a Baker Act or mental health professionals appointed in connection with forensic services for the criminally insane under chapter 916, F.S.

The clerk of the court is required to submit this estimate and requisition to the Justice Administrative Commission. The Justice Administrative Commission may reduce this amount if it finds the costs are unreasonable, inconsistent with applicable contractual terms or inconsistent with compensation standards established by general law. This standard of review is a change from current law which was based on whether the requisition was excessive. This section is effective July 1, 2004.

Section 63 amends s. 40.30, F.S., relating to submitted and endorsed requisitions for the payment of certain costs, to conform with changes made in the previous section. It refers to the Justice Administrative Commission in lieu of the Office of State Courts Administrator as the

entity endorsing the requisition for the needed amount to pay for certain due process costs. This section is effective July 1, 2004.

Section 64 amends s. 43.16, F.S., relating to the duties and powers of the Justice Administrative Commission. Reference to the location of the Justice Administrative Commission within the judicial branch is deleted. A change is made to conform reference to the Chief Financial Officer in lieu of the state treasurer.

Section 65 amends s. 43.26, F.S., relating to the powers of the chief administrative judge. This section updates terminology from “presiding judge” to “chief judge” to reflect current practice. The powers of the chief judge are revised. The chief judge is given the power to delegate the authority to contract and other such duties to the trial court administrator. The chief judge is given the power to require attendance in lieu of assigning clerks and bailiffs. The chief judge is also authorized to require the attendance of other officers of the court. The chief judge is charged with managing, operating, and overseeing the jury system as provided in the new section 40.001, F.S.

Section 66 amends s. 44.108, F.S., relating to the funding of mediation and arbitration. This section eliminates the county’s current authority to fund mediation and arbitration services through a levy of a service charge capped at \$5 in any circuit court or county court proceeding and a service charge of no more than \$45 on any modification of a divorce judgment. In its place, a filing fee of \$1 is to be levied on all county and circuit court proceedings. The clerk of the court is to forward these monies to the Department of Revenue for deposit into the state courts’ Mediation and Arbitration Trust Fund. This section is effective July 1, 2004.

Section 67 amends s. 49.10, F.S., relating to the constructive service of process. It removes the exception for counties where law required the notice to be published by designated record newspaper such all notices of action shall be posted by the clerk of the court in the same manner for indigent persons.

Section 68 amends s. 55.10, F.S., which currently requires the clerk to impose a fee of \$10 for services performed for a lien on real property as a result of a judgment or court order and if the transaction involves the transfer of multiple liens, an additional fee of \$5 for each additional lien. These fees are revised to increase those amounts up to \$15 and \$7.50, respectively. This section is effective July 1, 2004.

Section 69 amends s. 55.141, F.S., relating to satisfaction of judgments, to change a statutory cross-reference from s. 28.24(15) to s. 28.24(12), F.S., which conforms with renumbering in that section effectuated by changes in this bill. This section is effective July 1, 2004.

Section 70 amends s. 55.505, F.S., relating to recording and enforcement of foreign judgments. Subsection (3) is revised to increase authorize an increase in the service charge for recording a foreign judgment from \$25 to a cap of \$37.50. This section is effective July 1, 2004.

Section 71 amends s. 57.081, F.S., to clarify that an indigent person shall receive services of the courts, sheriffs, and clerks regardless of his or her present ability to pay, and to require the clerk of the court to record in lieu of waiving the cost of preparing the transcripts and copies of

exhibits in an administrative agency appeal. It details lengthy provisions relating to a determination of indigence by cross-referencing section 27.52, F.S., as revised by this bill. This section is effective July 1, 2004.

Section 72 amends s. 57.085, F.S., relating to the waiver of prepayment of court costs and fees for indigent prisoners. This section is revised to reflect that the clerk of the court in lieu of the court makes the determination of indigence based on submitted documentation and certifies such indigence. This section is also revised to indicate that the prisoner receives a deferral, not a waiver, of prepayment of costs once a certification of indigence is issued. This section is effective July 1, 2004.

Section 73 amends s. 61.14, F.S., which imposes certain court related fees for the modification and enforcement of alimony and child support orders or agreements currently set at \$5. This amount is revised to a cap of \$7.50. This section is effective July 1, 2004.

Section 74 amends s. 61.181, F.S., relating to the depositories for alimony and child support maintenance payments. The 4% administrative fee imposed for processing support payments is extended from June 30, 2003 to June 30, 2004.

Section 75 amends s. 61.21, F.S., relating to parenting courses to assist parents in divorce. The authority and responsibility for approving such courses and providing lists of approved course providers are transferred from the judicial circuits to the state.

Section 76 amends s. 77.28, F.S., relating to garnishment, to conform a statutory cross-reference to s. 28.24, F.S., as amended by this bill, relating to statutory filing fees. This section is effective July 1, 2004.

Section 77 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 as distinguished from documents produced pursuant to a summons, may not exceed \$0.15 per page and \$10.00 per hour for research and retrieval.

Section 78 amends s. 92.231, F.S., to revise the fees to compensate expert witness, which currently provide for compensation at \$10 per hour or at an amount deemed reasonable by the judge. The expert or skilled witness who testifies shall be compensated at an amount agreed to by the parties. No provision is made for when the parties can not agree. If the expert or skilled witnesses is providing services for the state including a private court-appointed counsel paid by the state, the expert or skilled witness shall be paid in accordance with the fee scheduled adopted by the Legislature based on the recommendations of the Article V Indigent Services Advisory Board. In any criminal cases in which an expert witness or skilled witness is providing services for the state or an indigent defendant, such witness shall be compensated in the same manner. This section is effective July 1, 2004.

Section 79 transfers s. 914.09, F.S., and renumbers it as s. 92.233, F.S., relating to the compensation of summoned witnesses in multiple cases. It is amended to solely to apply to criminal cases.

Section 80 amends s.125.59, F.S., relating to enforcement of county ordinances. Such violations are now to be prosecuted in the name of the county in lieu of the state. For purposes of prosecuting violations of special or local laws and ordinances, the county may designate a county-employed attorney as the prosecuting attorney or may contract with an attorney to act as prosecuting attorney. Such attorney is subject to the control of appointing authority and may employ assistants as needed and may exercise all powers that a state attorney exercises in the prosecution of a violation of the law. Such attorney is also subject to suspension and removal in the same manner as a state attorney (i.e., by the Governor and the Senate).

The county is required to pay for any attorney appointed for the purpose of defending a person for violation of the special or local law or ordinance if such representation is required by the state or federal constitution and if the person is indigent. The county is also responsible for all costs and fees associated with such prosecution and may recover such costs and fees as the prevailing party. This section is effective July 1, 2004.

Section 81 amends s. 142.01, F.S., relating to the establishment of a fine and forfeiture fund in each county to help pay for the cost of criminal prosecutions. This authorization and the authorization for the county to transfer excess funds to the county's general revenue fund are eliminated and replaced with a provision directing that the fund be used to pay for the costs of the clerks of the court incurred in performing court-related functions. Fines imposed under s. 775.0834(1), allocations of court costs and civil penalties imposed pursuant to ss. 318.18 and 318.21, and assessments imposed under ss. 938.21, 938.23, and 938.25, all costs refunded to the county are excepted from this fund. This section is effective July 1, 2004.

Section 82 amends s. 142.02, F.S., relating to the authority of the county to levy a special tax capped at 2 mills, on real and personal property to assist with the cost of criminal prosecutions. This section limits the use of county funds from a levy of a special 2 mill property tax to making payment for the cost of criminal prosecutions in the county where the crime was committed and when the fees and costs are a legal claim against the county. This section is effective July 1, 2004.

Section 83 amends s. 142.03, F.S., to redirect the deposit of fines and forfeitures to the clerk of the court for use in performing court-related functions. This section is effective July 1, 2004.

Section 84 amends 142.15, F.S., to redirect fees collected by the sheriff to the county where the crime was alleged to have been committed. This section is effective July 1, 2004.

Section 85 amends s. 142.16, F.S., to redirect fines and forfeitures to the clerk of the county in which the case was adjudicated as a result of a change in venue. This section is effective July 1, 2004.

Section 86 amends s. 145.022, F.S., to expand the prohibition against the board of county commissioners from appropriating salary to county property appraisers to also include clerk of the circuit or county courts, if all fees collected by such official is turned over to the board of county commissioners. This section is effective July 1, 2004.

Section 87 creates s. 162.30, F.S., to create statutory causes of action for civil enforcement of county and municipal ordinances which may be brought in county or circuit court dependent on the relief sought. The county or municipality bears the cost of court-appointed counsel if representation must be provided to a person in accordance with state or federal constitutional guarantees and the person is indigent. The county or municipality also bears all court costs and fees but may recover such costs and fees if it prevails. This section is effective July 1, 2004.

Section 88 amends s. 197.532, F.S., to conform a statutory cross-reference renumbered as s. 28.24(5) which relates to the appropriate fee for preparing and mailing notices in tax liens and collections proceedings. This section is effective July 1, 2004.

Section 89 amends s. 197.542, F.S., relating to sales at public auctions, to conform a statutory cross-reference renumbered as s. 28.24(21), F.S., which relates to fees imposed for processing an application for a tax deed sale. This section is effective July 1, 2004.

Section 90 amends s. 197.582, F.S., relating to disbursement of sale proceeds, to conform a statutory cross-reference renumbered as s. 28.24(10), F.S., which relates to fees for holding in a repository money resulting from sale of property. This section is effective July 1, 2004.

Section 91 amends s. 212.055, F.S., relating to discretionary sales surtax, to expand local government use of the surtax for any expenditure of the construction, lease, or maintenance or provision of utilities or security for facilities set forth in s. 29.008, F.S. This section is effective July 1, 2004.

Section 92 amends s. 212.20, F.S., as amended in ch. 2002-291, Laws of Florida, to revise the revenue-sharing distribution of the sales tax. The percent to be initially distributed to the Local Government Half-cent Sales Tax Clearing Trust Fund is decreased from 9.653 to 8.814. A subsequent percent that is distributed to this fund is increased from 0.065 to 0.095. The percent distributed to the Revenue Sharing Trust Fund for Counties is decreased from 2.25 percent to 2.0440 percent. The percent to be distributed to the Revenue Sharing Trust Fund for Municipalities is increased from 1.0715 percent to 1.3409 percent. This section is effective July 1, 2004.

Section 93 amends s. 218.21, F.S., to redefine guaranteed entitlement for municipalities which is currently 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. The bill circumscribes the municipal government guaranteed entitlement to no more than the aggregate amount received from the Revenue Sharing Trust Fund for Municipalities during the 2003-2004 fiscal year. This section is effective July 1, 2004.

Section 94 amends s. 218.25, F.S., to expand the authority of local governments to pledge state-shared revenue for debt for which local governments are currently prohibited from pledging revenue in excess of the guaranteed entitlement as defined in s. 218.21, F.S. Local government may not pledge more than 50% of the funds received the prior year. This section is effective July 1, 2004.

Section 95 amends s. 218.35, F.S., relating to financial matters of county fee officers, to provide that clerks of the circuit court must prepare a budget as provided in s. 28.36, F.S., and must detail in the budget the methodologies used to apportion costs between court-related and non-court-related functions. The bill also removes the requirement for the clerk of the court to file a budget with the state court administrator and the board of county commissioners. This section takes effect July 1, 2004.

Section 96 amends s. 318.15, F.S., relating to the failure to comply with civil penalty or to appear, to provide that the mandatory processing fee a person must pay to the clerk of court for processing an adjudication of guilt that results from the failure to complete driver improvement school may be up to \$15. Current law provides that this processing fee is \$10. Also provides that the non-refundable service fee required to be paid to the clerk of court as part of the clearing of a suspension of a license may be up to \$37.50. Current law provides that this fee is \$25. This section takes effect July 1, 2004.

Section 97 amends s. 318.18, F.S., to increase various fees for penalties for non-criminal dispositions, including increases to the fee to dismiss citations from \$5 to a maximum of \$7.50, and to increase court costs assessed in adjudication of nonmoving traffic violations from \$6 to \$16, and moving traffic violations from \$10 to \$30. Removes authority to fund from fees and costs collected under this section a criminal justice selection center or other local criminal justice access and assessment center. This section takes effect July 1, 2004.

Section 98 amends s. 318.21, F.S., to revise the location of deposits of certain civil penalties from county to state revenue funds to reflect the assumption by the state of certain funding responsibilities. This section takes effect July 1, 2004.

Section 99 amends s. 318.325, F.S., to provide that a county or municipality may fund a hearing officer to hear cases involving violations of municipal or county parking ordinances. This section takes effect July 1, 2004.

Section 100 amends s. 322.245, F.S., to increase the delinquency fee from \$10 to a maximum of \$15 for persons who are charged with specified criminal offenses and fail to comply with the directives of the court. This section takes effect July 1, 2004.

Section 101 amends s. 327.73, F.S., to increase the charge from \$12 to a maximum of \$18 for court costs for anyone who fails to comply with the court's requirements or fails to pay specified civil penalties. This section takes effect July 1, 2004.

Section 102 amends s. 382.023, F.S., to increase the fee from \$7 to a maximum of \$10.50 for dissolution of marriage. The bill provides that 43 percent of this fee, instead of \$3, be retained by the circuit court and that 57 percent, instead of \$4, be remitted to the state. This section takes effect July 1, 2004.

Sections 103, 104, and 105 amend ss. 392.55, F.S., 392.56, and 394.473, F.S., respectively, to replace "indigency" with "indigence." These sections take effect July 1, 2004.

Section 106 amends s. 3945.3025, F.S., to correct cross-references. This provision takes effect July 1, 2004.

Section 107 amends s. 397.334, F.S., to revise provisions concerning treatment-based drug court programs to provide for the assumption of funding for these programs by county government other than what the state is to provide for under s. 29.004. Counties may enter into interlocal agreements for the collective funding of these programs. This provision takes effect July 1, 2004.

Section 108 amends s. 712.06, F.S., to correct a cross-reference. This provision takes effect July 1, 2004.

Section 109 amends s. 713.24, F.S., to increase fees for certain services performed by the clerk of the court in transferring liens. The clerk may charge up to \$15 to make a serve a certificate. Current law provides for a \$10 charge. For each transaction involving a multiple liens, an additional charge of up to \$7.50 is to be charged for each additional lien. Current law provides for a charge of \$5. This provision takes effect July 1, 2004.

Section 110 amends s. 721.83, F.S., to require the clerk of court to charge against a plaintiff who files a consolidated foreclosure action separate filing fees and service charges for each defendant described in the action. This provision takes effect July 1, 2004.

Section 111 amends s. 741.30, F.S., to provide that the clerk of court must advise petitioners for a domestic violence injunction of the opportunity to apply for a certificate of indigence in lieu of prepayment of filing fees. Current law provides for the clerk to advise a petitioner of the availability of affidavits of insolvency or indigence in lieu of payment of filing fees. This provision takes effect July 1, 2004.

Section 112 amends s. 744.3135, F.S., to increase the fee from \$5 to a maximum of \$7.50 that a professional guardian pays to the clerk for handling and processing professional guardian files. This provision takes effect July 1, 2004.

Section 113 amends s. 744.365, F.S., to increase the fee from \$50 to a maximum of \$75 paid to the clerk of the court for an inventory filed by a guardian. The bill eliminates the requirement that the county pay the auditing fee when such fee is waived by the court. This provision takes effect July 1, 2004.

Section 114 amends s. 744.3678, F.S., to increase the fees paid by the guardian to the clerk of the court for filing an annual financial return. This provision takes effect July 1, 2004.

Section 115 amends s. 775.083, F.S., to provide that fines collected pursuant to the subsection (1) are to be deposited in the fines and forfeiture fund established in s. 142.01, F.S. Revises, and recreates as a new subsection (2), existing language that provides that court costs imposed on persons by the adoption of a local ordinance to fund certain crime prevention programs are now imposed by general law for that purpose. The funds collected are to be accounted for separately from other county funds and may only be used for the purpose of funding certain crime prevention programs. This provision takes effect July 1, 2004.

Section 116 amends s. 796.07, F.S., to reflect the assumption by the state of certain funding responsibilities. This provision takes effect July 1, 2004.

Section 117 amends s. 914.11, F.S., relating to indigent defendants, to provide that a defendant that is determined to be indigent pursuant to s. 27.52, F.S., may seek a deferral of payment of costs necessary to procure the attendance of witnesses. The costs associated with procuring a defendant's witnesses are to be paid by the state. Current law requires the county to pay these costs. This provision takes effect July 1, 2004.

Section 118 amends s. 916.107, F.S., relating to the provision of treatment for forensic patients, to reflect revisions made to s. 27.52, F.S., relating to the determination of indigence for purposes of obtaining counsel or other court-related services. This provision takes effect July 1, 2004.

Section 119 amends s. 916.15, F.S., relating to the involuntary commitment of a defendant adjudicated not guilty by reason of insanity, to reflect revisions made to s. 27.52, F.S., relating to the determination of indigence for purposes of obtaining counsel or other court-related services. This provision takes effect July 1, 2004.

Section 120 amends s. 938.01, F.S., relating to the Additional Court Cost Clearing Trust Fund, revising that section to read that the existing court cost of \$3 is to be paid by every person who is convicted of violating a state criminal statute or local ordinance. The section currently requires each court to assess \$3 as a court costs against every person who is convicted of violating a state criminal statute or local ordinance.

Section 121 amends s. 938.03, F.S., relating to the Crimes Compensation Trust Fund, to provide that persons pleading guilty or nolo contendere or be convicted or adjudicated guilty of violating a criminal statute, traffic offense, or certain local ordinances must pay \$50 in court costs and that the assessment cannot be waived by the court. The section currently provides that the \$50 assessment is to be imposed by the court and that the court may waive the assessment upon a detailed showing.

Section 122 amends s. 938.05, F.S., relating to additional court costs for felonies, misdemeanors, and criminal traffic offenses, to reflect the assumption by the state of certain funding responsibilities and changes made to s. 142.01, F.S., by this bill. These additional costs are to be deposited in the fine and forfeiture fund established pursuant to s. 142.01, F.S. Provisions providing for the clerk to retain a portion of the court costs as a service charge and providing that political subdivisions are not liable for payment of the court costs under the section are removed. Current law provides that these court costs are in part to be deposited in a county trust fund and in part to be retained by the clerk as a service charge. Current law also provides that a political subdivision is not liable for payment of the court costs under this section. This provision takes effect July 1, 2004.

Section 123 amends s. 938.06, F.S., relating to additional costs for crime stoppers programs, to remove a provision precluding the assessment of costs under the section against a political subdivision of the state. This provision takes effect July 1, 2004.

Section 124 amends s. 938.19, F.S., relating to teen courts, to provide that counties are authorized to fund teen courts. Current law provides upon the creation of a teen court a county may impose a \$3 assessment against all persons adjudicated or pleading guilty to criminal offenses as described in the section. The bill repeals the authority to impose the assessment, the authority for the clerk of court to collect and remit such monies, the authority for the clerk to retain five percent of the assessment as income for the clerk's office, and the authority to use other monies as provided by general law for the operation of a teen court. This provision takes effect July 1, 2004.

Section 125 amends s. 938.27, F.S., relating to judgment for documented costs of prosecution on conviction, to revise the section to make clear that the court must impose on a person, upon conviction, a judgment for the documented costs of prosecution. The section currently provides for installment payments within timeframes based on the date of sentencing or initiation of probation. This bill provides that the obligation to make payment for these costs continues after the expiration of the payment period specified in the section. This bill also removes discretion afforded a judge to impose the costs and the criteria upon which such determination is to be made.

Section 126 amends s. 938.29, F.S., relating to liens for payment of attorney's fees and costs associated with legal assistance, to revise existing language to reflect the assumption by the state of certain funding responsibilities. First, the section is revised to make clear that a defendant who has been adjudicated guilty or has plead guilty or nolo contendere and has received legal assistance through the Public Defender's Office, a special assistant public defender, or a conflict attorney is liable for payment of attorney's fees and costs associated with the defense. A judgment is to be entered in the name of the state for the attorney fees and costs associated with such representation. The payment of the judgment is to be collected and deposited in the General Revenue Fund. The clerk of the circuit court in the county in which the assistance was rendered is to enforce the judgment on behalf of the state. Finally, the clerk of the court is authorized to contract with a private attorney or collection agency to collect on these judgments. Current law provides that the county is the lien holder and enforcement and collection is done through authority granted to the counties.

Section 127 amends s. 938.30, F.S., relating to supplementary proceedings concerning financial obligations in criminal cases, to revise existing language to reflect the assumption by the state of certain funding responsibilities. Revises existing language to make clear that a person obliged to pay for any financial obligation in a criminal case. Removes a requirement that the clerks of court report quarterly on collections made under this section and a provision that authorizes the county commissioners to refer payments under this section that are past due to a private attorney or a collection agency.

Section 128 amends s. 938.35, F.S., relating to the collection of court-related financial obligations by a county, to provide that a county may use a private attorney or a collection agency to collect on court costs, fines, or other costs that are outstanding for more than 90 days. To make use of these services, the county must first determine the using such services is cost-effective and must follow applicable procurement practices in obtaining such services.

Section 129 amends s. 939.06, F.S., to reflect the assumption by the state of certain funding responsibilities. Provide that a defendant acquitted and who has paid taxable costs during the prosecution is to obtain a refund of those costs from the state. Current law provides that the defendant is to seek the refund from the county. This provision takes effect July 1, 2004.

Section 130 amends s. 939.08, F.S., to reflect the assumption by the state of certain funding responsibilities concerning payment of costs, fees, and expenses relating to criminal cases. Provides that bills or expense statements are to be submitted to the trial court administrator of the circuit and cannot be paid until the trial court administrator has approved the bill and has certified that “it is just, correct, and reasonable and contains no unnecessary or illegal items.” This provision takes effect July 1, 2004.

Section 131 amends s. 939.12, F.S., to reflect the assumption by the state of certain funding responsibilities relating to judgments against the state. Provides the state is pay judgments entered against the state to the appellant or appellant’s agent or attorney. Current law provides that the county commissioners of the county from the court of which the appeal was taken are to satisfy such judgments. This provision takes effect July 1, 2004.

Section 132 reenacts s. 943.053, F.S., to incorporate amendments made to ss. 27.51 and 27.53, F.S., by this bill as those amendments affect those persons impacted by the operation of this section. This provision takes effect July 1, 2004.

Section 133 amends s. 947.18, F.S., to reflect the assumption by the state of certain funding responsibilities in the prosecution of criminal cases. Payments due for legal assistance rendered on behalf of a defendant are now due the state. The section currently provides that such payments are due to the county which provided legal assistance through a public defender, special public defender, or appointed conflict counsel. This provision takes effect July 1, 2004.

Section 134 amends s. 948.03, F.S., to correct a cross-reference. This provision takes effect July 1, 2004.

Section 135 amends s. 960.001, F.S., to reflect the assumption by the state of certain funding responsibilities relating to victims’ services and local witness coordination services. Provides that such services are provided pursuant to authority found in s. 27.0065, F.S. This section is effective July 1, 2004.

Section 136 amends s. 984.08, F.S., to replace “indigency” with “indigence.” This provision takes effect July 1, 2004.

Sections 137, 138, 139, and 140 amend ss. 985.203, 985.215, 985.231, and 985.233, F.S., to replace the term “indigency” with “indigence” respectively. These provisions take effect July 1, 2004.

Section 141 creates an undesignated section which directs the Department of Financial Services to undertake a review of and make revisions to the Florida Accounting Information Resource subsystem and the Uniform Accounting System Manual by July 1, 2004, made necessary as a result of Revision 7.

Section 142 creates an undesignated section which directs the Chief Financial Officer (CFO) to conduct a study to determine county expenditures for court-related services for county fiscal year ending September 30, 2002. This section authorizes the CFO to provide the form, manner, and timeframes in which a county's chief financial officer, be it the clerk of court or another county officer, is to submit such information. The section directs certain other local officials to assist the CFO in collecting the data. The county chief financial officer is to reconcile this information with the county annual financial report. All parties are to attest to the accuracy of information submitted in compliance with this section.

The Legislative Committee on Intergovernmental Relations may assist in data collection, and the committee and the Auditor General may provide technical assistance to the CFO.

The section appropriates \$200,000 from the Insurance Regulatory Trust Fund to support this study, and the CFO is authorized to those reimburse those individuals who incur travel costs associated with this study. However, it is not clear who would be eligible for such reimbursement. Finally, The CFO is to submit a report to the presiding officers of the Legislature no later that November 1, 2003.

Section 143 creates an undesignated section which provides a statement of legislative intent that the allocation of funding responsibilities and the provisions of this bill constitute an important state interest.

Section 144 creates an undesignated section which provides that the provisions of the act do not affect the validity of an administrative or judicial proceeding pending on the day of the transfer of funding responsibility. This section also provides that the entity which provides funding on or after July 1, 2004, shall be the successor in interest to any existing contracts ratified by the successor entity, but that the successor entity shall not be responsible for payment for services rendered or provided in whole or in part under such contracts prior to the date of succession.

Section 145 creates an undesignated section which provides that any judicial act may be taken or performed on any day of the week, Sunday and holidays included.

Section 146 creates an undesignated section which provides that notwithstanding s. 938.19, F.S., relating to teen court operations and administration, a county may use surplus funds provided for teen courts for juvenile drug courts. This section expires July 1, 2004.

Section 147 creates an undesignated section which repeals and abolishes, effective July 1, 2004, court services charges and fees imposed by local governing authorities by ordinance or special law pursuant to authority found in ss. 28.242 through 34.041, F.S. It is not clear what service charges and fees are repealed and abolished and how the underlying authority for these service charges and fees is affected by this provision.

Section 148 creates an undesignated section which directs the clerks of court to submit to the legislative presiding officers a report identifying court-related functions and costs for fiscal year 2003-2004. This report is due no later than November 1, 2003.

Section 149 creates an undesignated section which provides that, as a result of the discretion provided in this bill to the clerks of court to set service charges and fees, each clerk of court is to submit no later than October 1, 2003, to the Clerk of Court Operations Conference the schedule of court-related fees, service charges, and costs that are to be implemented effective July 1, 2004. The Conference is to submit this information in a uniform format to the Legislature no later than November 1, 2003.

Section 150 creates an undesignated section which repeals ss. 25.402 and 34.201, F.S.

Section 151 creates an undesignated section which repeals, effective July 1, 2004, numerous statute sections.

Section 152 creates an undesignated section which provides that any law amended by this bill and also amended at the 2003 Regular Session is to be construed as if they had been enacted at the same session and that full effect shall be given to each, if possible.

Section 153 provides that except as otherwise provided within the bill, the bill takes effect July 1, 2003.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The bill reduces the percentage of state shared revenues with counties and municipalities and thus appears to require approval by two-thirds of the membership of each house of the legislature pursuant to s. 18 (b) of art. VII of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Repeal of Existing Special Laws or Ordinances

The bill eliminates a county's authority to assess by ordinance or special or local law, amounts in excess of specified charges in circuit and county court matters. See e.g. s. 28.241(1), F.S.(to fund facilities, law libraries, equipment maintenance, legal aid programs, and public guardian programs), and s. 34.032, F.S. It is indeterminate what effect this amendment may have as to existing ordinances or special or local laws in effect which assess this service charge. This may implicate section 1, article I of the Florida Constitution which states that "[a]ll political power is inherent in the people. The

enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." Citizens retain some power to deal directly with governmental measures at the local level through the enactment of ordinances or passage of special or locals." If applied retroactively, this provision would by implication constitute a legislative repeal of all existing ordinances enacted at the local level and a legislative repeal of all existing special or local laws assessing this service charge, thus making them unenforceable. The general rule of statutory construction is that a substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but a procedural or remedial statute can. *See Life Care Centers v. Sawgrass Care Center*, 683 So.2d 609, 613 (Fla. 1st DCA 1996), citing *State Farm Mutual Automobile Insurance Co. v. Laforest*, 658 So.2d 55, 61 (Fla. 1995).

Statutory Attorney Fee Caps

The bill sets forth statutory attorney's fee caps for representation in various proceedings and 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. The issue of fee caps was recently addressed in a Florida Supreme Court case. *See Olive v. Maas*, 811 So.2d 644 (Fla. 2002), reaffirming the ruling and reasoning in *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986)(finding "fee maximums unconstitutional when applied to cases involving extraordinary circumstances and unusual representation). In *Makemson*, the case seemed to look to a statutory attorneys' fee cap as solely a "legislative guide" and 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." *Makemson* at 11115.

Separation of Powers

The bill contains provisions that arguably involve matters of judicial practice and procedure which would fall within the exclusive purview of the judicial branch. *See* art. V, s. 2(a), Fla. Const. The separation of powers doctrine under section 3 of article II of the Florida Constitution would be implicated only to the extent this bill or specific provisions therein are construed to circumvent or otherwise encroach on the Supreme Court's constitutional authority to administer the court system and to adopt rules for the practice and procedure in all courts.

Conflict of Interest and Withdrawal of Public Defender

The bill circumscribes the grounds upon which a public defender may be allowed to withdraw due to a conflict including prohibiting withdrawal solely on the basis of excessive workload or does not allow a public defender to withdraw solely on the basis of excessive workload or inadequacy of funding. The bill suggests in certain places that the conflict of interest must be ethically-based. It is not known whether issues of excessive workload and inadequacy of funding could breach ethical grounds. This restriction may implicate constitutional issues including claims on the grounds of ineffective representation by counsel.

V. Economic Impact and Fiscal Note:¹⁵

A. Tax/Fee Issues:

Tax Distributions

In order to fund the state funding requirements of Revision 7, the bill redirects sales and use tax revenue from local governments to the state’s General Revenue Fund. Specifically, the bill reduces the percentage of sales and use tax revenues that goes to local governments. The Local Government Half-cent Sales Tax distribution is reduced from 9.653 percent to 8.814 percent, generating \$135 million for deposit in the General Revenue Fund in fiscal year 2004-05; the Revenue Sharing Trust Fund for Counties distribution is reduced from 2.25 percent to 2.044 percent, generating \$29.9 million for deposit in the General Revenue Fund in 2004-05; and the Revenue Sharing Trust Fund for Municipalities distribution is increased from 1.0715 percent to 1.3409 percent, removing \$44.6 million from the General Revenue Fund in fiscal year 2004-05.

FY 2004-05	State GR Fund	Local Government
½ Cent Sales Tax	\$ 135.0	\$ (135.0)
County Rev. Sharing	29.9	(29.9)
Municipal Rev. Sharing	(44.6)	44.6
Total	\$ 120.3	\$ (120.3)

State Fee Increases and Transfer of Excess Revenue to State

The estimates provided in the table below assume that all clerks in the state charge the maximum fees, charges and costs allowed by statute.

SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	AMOUNT OF STATE REVENUE PROJECTED (in millions)
First \$50 of circuit civil and county civil filing fees that are set at \$250	s. 28.241 s. 34.041	\$26.7
State 1/3 share of all fines, fees, charges and costs collected by the clerks AFTER payment of deficiency funds to clerks with revenue deficits	s. 28.241 s. 28.37	\$86.3
Surplus clerks revenue transferred to state each January 1	s. 28.37	\$12.7
SUBTOTAL ANNUAL STATE REVENUE PROJECTED FOR FY 2004-05		\$125.7
LESS: \$7 General Revenue service charge deleted from circuit civil and county civil filing fees	s. 28.241	(\$5.3)
TOTAL PROJECTED NET INCREASE IN STATE REVENUE FROM FEES AND TRANSFERS FOR FISCAL YEAR 2004-05		\$120.4

¹⁵ The substance of the economic impact and fiscal note was compiled primarily by staff for Subcommittee on Appropriation for Judiciary and Article V.

Total Projected Increase in State Revenue	2004-05 (millions)
Increase in Sales Tax Revenue From Local Distributions	\$120.3
Net Increase in Fees and Transfers	\$120.4
Total	\$240.7

If court-related fee and charge revenues increase each year, the revenue transferred to the state may increase over time.

B. Private Sector Impact:

This bill may have an impact on those attorneys who currently 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

The net change in all clerks’ fees and charges to judicial system users during state fiscal year 2004-05 using Florida Association of Court Clerks and Comptrollers (FACC) projections is an increase of \$167.3 million. This is calculated as follows:

Fiscal Year 2004-05	(millions)
Total Estimated Clerk’s Collections	\$ 463.2
LESS: Current Fee and Charge Collections Used to Fund the Clerks	(118.5)
LESS: Current Fee and Charge Collections to be Redirected From the Counties	(162.2)
LESS: Current Federal Funds Received for Child Support Activities	(15.2)
NET INCREASE IN FEES AND CHARGES	\$ 167.3

In addition, the Court Education Trust Fund fee increase will be borne by users, estimated by the Office of the State Courts Administrator to be \$1.1 million.

Litigants may experience an increase in filing fees attendant with their civil actions as clerks of the court are authorized to impose filing fees up to new statutory cap levels or to levels necessary or sufficient to cover the costs of operations associated with court-related functions. Litigants will experience an increase in service charges and other costs associated with judicial proceedings.

C. Government Sector Impact:

Since the bill seeks reallocate primary funding responsibilities of the state courts system from the counties to the state, there may be some fiscal relief for the counties. It is indeterminate and difficult to project with any precision the long-term or even short-term effect of this bill on state and local governments and the judicial branch given the magnitude of changes engendered by this bill. The following statements are based on preliminary estimations:

Local Government Impact

The impact on local government is at least threefold.

1. A positive impact on counties arises from the elimination of county funding for court-related functions of the clerks.

2. A negative impact results from the redirection of numerous fees, fines, and charges from the counties to the clerks.
3. A negative impact on county governments will result from the reduction in the state ½ cent sales tax and revenue sharing distributions.

The Florida Association of Court Clerks indicates that the bill will have a positive revenue impact for counties resulting from the changes to fees and charges in this bill, exclusive of the changes to the state revenue sharing and ½ cent sales tax distributions.

Of the \$264.4 million of the court-related costs of the clerks that are not covered by fees and charges, the counties will be required to continue to pay only the costs associated with communications and technology, pursuant to chapter 29, F.S., currently estimated to be \$55.6 million. This saves the counties \$208.8 million. Notably counties will lose revenues from fines and forfeitures and filing fee surcharges totaling \$162.2 million, and will be required to pay to the clerk \$26 million in filing fees for prosecution of local ordinances. Therefore the net gain to the counties is \$20.6 million; calculated as the \$208.8 million in saved expenditures less the \$162.2 million of lost revenues, less the \$26 million in local ordinance filing fees.

The table below shows the total fee and charge revenues, estimated by the FACC, that will fund the clerks’ operations for each source of revenue proposed in the bill. The estimates provided in the table below assume that all clerks in the state charge the maximum fees, charges and costs allowed by statute.

SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	ESTIMATED COLLECTIONS (in millions)
Circuit civil filing fees	s. 28.241	\$77.2
County civil filing fees	s.34.041	\$63.7
\$50 fee for reopening any circuit civil case (non-criminal and non-traffic)	s. 28.241	\$20.2
\$20 cost for civil moving traffic violations; and \$10 cost for civil non-moving traffic violations	s. 318.18	\$31.4
\$200 filing fee paid by county or municipality for filing municipal code or ordinance violations in civil court	s. 28.2402	\$26.0
Various service charges for probate matters	s. 28.2401	\$14.7
SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	ESTIMATED COLLECTIONS (in millions)
50% increase in various service charges	s. 28.24, s. 34.041, s. 55.505, s. 55.10, s. 61.14, s. 318.15, s. 318.18, s. 318.21, s. 322.245, s.327.73, s.382.023, s.713.24, s.744.3135, s.744.365, s.744.3678	\$41.7
Redirection of various fee and fine revenues from counties to clerks	s. 34.191, s. 142.01, s. 142.03, s. 142.16	\$116.4
Existing Child Support revenue from federal funds	Current law	\$15.2
TOTAL COLLECTIONS BASED ON FY 2000-01 DATA		\$406.5

TOTAL COLLECTIONS INFLATED TO FY 2004-05 (FACC PROJECTION METHOD)		\$463.2
Less state share remitted monthly, and less excess revenues remitted each January 1 st to the state		(\$125.7)
TOTAL CLERKS' OPERATING REVENUE FOR FY 2004-05		\$337.5

As was indicated above under the Public Sector Impact, the \$463.2 million in revenue is not entirely new revenue, since \$280.7 million currently collected from fees and charges is used to fund the operations of the clerks, and \$15.2 million is currently received from federal funds. **Net new revenue is therefore \$167.3 million.**

In addition, approximately \$1.6 million will be deposited in the Clerk of Court Operations Conference Operating Fund from the \$5 allocation of the circuit civil filing fees.

The \$120.3 million reduction in shared sales tax revenues to counties and municipalities represents the growth in sales tax revenues local governments would have received over fiscal year 2004-05 and fiscal year 2005-06. It is anticipated that beginning in fiscal year 2006-07, local governments will be back at the 2003-04 level of state shared sales tax revenues. The \$120.3 loss of sales tax revenue is estimated to be distributed as follows:

Revenue Source	Counties (millions)	Municipalities (millions)
½ Cent Sales Tax	\$ (90.4)	\$ (44.6)
Revenue Sharing	<u>(29.9)</u>	<u>44.6</u>
Total	\$ (120.3)	\$ 0

State Government Impact

For fiscal year 2003-2004, the bill appropriates \$200,000 from Insurance Regulatory Trust 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 2000-2001 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 \$96.9 million of the 2000-2001 county expenditures. This includes court administration, judicial support staff, law clerks and legal support, expert witnesses, alternative dispute resolution, masters and hearing officers, and case management services. 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:

Section 50 provides the process by which deficits for contracted due process services (which is not defined) may be remedied by access to a contingency fund containing appropriated monies for such purpose. Subsection (3) provides that when no other circuit can identify surplus funds, the Trial Court Budget Commission may request the Chief Justice to request a budget amendment to transfer needed funds from the contingency funds. It appears to erroneously provide that the Office of State Courts Administrator in lieu of the Trial Court Budget Commission shall include in the budget amendment the explanation by the chief judge of the circuit regarding the deficit.

VII. Related Issues:

Section 29 amends the schedule for service charges that may be imposed in probate proceedings. These service charges do not make an accommodation in the service charge for ancillary administration involving small estates (equal or less than \$50,000, as provided in s. 734.1025, F.S.) as is made for summary administration of small estates less than \$1,000 in which the service charge is \$100 in lieu of \$200 (for summary administration of estates valued at \$1,000 or more) or \$250 (for formal and ancillary administration of all other estates).

The bill authorizes the clerks of the court to increase filing fees capped at a statutory limit. However, there are sections of the bill that use the terms “filing fees” and “service charges” interchangeably. There is also inconsistency as to when the filing fee or service charge must or may be imposed, collected, assessed or paid. For example, a filing fee may be assessed for a civil action, a service charge shall be charged and collected for filing a notice of appeal. See e.g., sections 32 and 51 of the bill.

Section 32 provides that the first \$57.50 of a filing fee which may total \$250 is designated for deposit between three funds. It further states that one-third of any filing fee in excess of \$57.50 is to be deposited into the Clerks of the Court Trust Fund. It is not clear whether it meant that any amount in excess of the first \$57.50 is to be deposited accordingly.

Section 36 requires the Clerk of Court Operations Conference to submit annual audited financial statements to the Auditor General which in turn the Auditor General must audit the Conference. It is not clear whether there is an intent for there to be an audit of an audit. This section also authorizes the Clerk of Court Operations Conference to adjust the schedule of fees and charges set by statute in an amount representing the average percentage change in the Consumer Price Index. Therefore, this may create a situation in which the statutorily established schedule will be different from the actual schedule adjusted over time.

Section 39 revises s. 29.001, F.S., which related to the intent and essential elements of the state courts system. The section refers to “enumerated” elements of the state courts system, and the offices of the state attorneys and public defenders but contains no statutory cross-reference as to where these elements are enumerated.

Section 45 provides for the automatic transfer of equipment and furnishings not otherwise specified the responsibility of the county to the state without charge, effective July 1, 2005. It is

not clear whether this refers to the physical transfer or to the transfer of financial responsibility for the maintenance of such equipment or furnishings and whether this constitutes “an unconstitutional taking” if the equipment or furnishings were paid for by the counties. Although this section further defines communications services, there is still some ambiguity as to the practical implementation of a communication and who is financially responsible for specific components.

Section 47 requires annual budget reports from the chief judge, the public defender, and the state attorney of each circuit as relates to their respective expenditures for the elements of the state courts system, the offices of the state attorney as listed in s. 29.005, F.S., and the offices of the public defender, respectively. However, this section does not address how budget reports will be submitted regarding expenditures for the elements of court-appointed counsel as provided in s. 29.007, F.S.

The bill revises a number of statutory provisions which are cross-referenced in other sections of law. Under the rules of statutory construction, an existing section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is expressly reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment. Therefore, existing law containing cross-references to sections amended by this bill will not incorporate those amendments and will be construed in accordance with the section of law as existed previously.

Section 87 creates a statutory civil cause of action for counties and municipalities to enforce its ordinances. It is unclear why this provision is needed or what statutory authority or police powers the counties and municipalities do not already have to seek recourse and enforce their ordinances.

VIII. Amendments:

None.