

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5119 PCB CCJ 09-11 Clerks of Court Budgets  
**SPONSOR(S):** Criminal & Civil Justice Appropriations Committee and Adams  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Appropriations Committee	8 Y, 0 N	Darity	Davis
1)	Full Appropriations Council on General Government & Health Care	31 Y, 1 N	Darity	Leznoff
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill amends s. 28.241, F.S., revising the current distribution of filing fees for trial and appellate proceedings. The bill provides that of the first \$125 in filing fees, \$120 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. Current law provides of the first \$85 in filing fees, \$80 must be remitted to General Revenue. The \$5 balance is deposited in the Department of Financial Services' Administrative Trust Fund to fund the Clerks of Court Operations Corporation pursuant to contract as outlined by statute. The section is further amended to conform the proportional change to this distribution of current filing fees.

This bill amends s. 34.041, F.S., revising the current distribution of filing fees for civil actions in county court. The bill provides that the first \$120 in filing fees for all claims more than \$2,500 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. Current law provides the first \$80 must be remitted to General Revenue. The section is similarly amended to conform the proportional change to this distribution of current filing fees.

The bill sets the statewide budget cap for the clerks of court at \$474,174,512 for the county fiscal year 2008-2009. The bill requires the Clerk of the Court Operations Corporation to reduce the individual approved budgets of the clerks of court to ensure that the sum of the approved budgets does not exceed this statewide budget cap. The budget cap is the maximum annual budget amount for court-related functions of the clerks, as calculated by the percentage change in revenues collected and retained by the clerks.

This bill conforms the law to the proposed House of Representatives General Appropriations Act by redirecting approximately \$22.9 million of filing fee collections from the clerks of court to the General Revenue Fund, where these funds have been appropriated in the proposed budget.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Revision 7 to Article V Overview**

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”<sup>1</sup>

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.<sup>2</sup> Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Article V, section 14(c) provides that:

Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . 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.

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<sup>1</sup> Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

<sup>2</sup> *Id.* at 2.

## Court-Related Functions

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.<sup>3</sup>

The list of functions clerks may not fund from filing fees, service charges, court costs, and fines includes:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.<sup>4</sup>

The clerks of court are allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions are distributed to the General Revenue Fund or other trust funds.<sup>5</sup> Under existing law, clerks are required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.<sup>6</sup> Thereafter, the Department of Revenue will transfer the funds in the Department of Revenue Clerks of the Court Trust Fund which are not needed to resolve clerk deficits to the General Revenue Fund.

## Florida Clerks of Court Operations Corporation

To ensure accountability for the revenues collected by the clerks of the court, the Legislature created the Florida Clerks of Court Operations Corporation (corporation).<sup>7</sup> The corporation is considered a political subdivision of the state and is exempt from corporate income tax.<sup>8</sup> All clerks of the circuit court

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

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

<sup>5</sup> *See, e.g.*, Section 28.241(1)(a), F.S. For example, current law sets the maximum filing fee of \$295 for a civil action, suit, or proceeding in circuit court. Portions of the \$295 are distributed to the General Revenue Fund, the clerks, the Department of Financial Services' Administration Trust Fund to fund the Florida Clerks of Court Operations Corporation, the state courts' Mediation and Arbitration Trust Fund, the Department of Revenue Clerks of the Court Trust Fund, the Court Education Trust Fund, and the Department of Financial Services Administrative Trust Fund to fund clerk education.

<sup>6</sup> Section 28.37(2), F.S.

<sup>7</sup> Section 28.35, F.S.

<sup>8</sup> Section 28.35(1)(c), F.S. The corporation is funded pursuant to contract with the Chief Financial Officer. Funds are provided to the Chief Financial Officer for this purpose as appropriated by general law. Section 28.35(5), F.S.

are members of the corporation and hold their position and authority in an ex officio capacity.<sup>9</sup> The corporation's functions include:

- Establishing a process for reviewing and certifying proposed court-related budgets submitted by each clerk;
- Developing and certifying a uniform system of performance measures and applicable performance standards;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards; and
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions.<sup>10</sup>

On or before August 15 of each fiscal year, each county clerk prepares a proposed budget and submits it to the corporation.<sup>11</sup> The budget must provide detailed information on the anticipated revenues available and expenditures necessary for the performance of court-related functions. The proposed budget must be balanced.<sup>12</sup> Current law sets the maximum budget amounts for the standard list of court-related functions that may be funded from fees, service charges, court costs, and fines.<sup>13</sup> Upon review and certification of the individual clerk of court budgets by the Clerk of Courts Operations Corporation, revenues in excess of the amount needed to fund the approved clerk of court budgets are deposited in the General Revenue Fund.<sup>14</sup>

If the clerk estimates that available funds plus projected revenues will be insufficient to meet anticipated expenditures for court-related functions, the clerk must report a revenue deficit to the corporation. If the clerk has raised fees, services charges, and any other court-related clerk fees to the maximum amounts, but still reports a deficit, the corporation may notify the Department of Revenue that the clerk is authorized to retain revenues, in an amount necessary to fully fund the projected deficit.<sup>15</sup> If a deficit still exists after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue must certify the amount of the deficit to the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.<sup>16</sup>

## **Effects of Proposed Changes**

### **Clerks of the Court Budget**

The bill sets the statewide budget cap for the clerks of court at \$474,174,512 for the county fiscal year 2008-2009. The bill requires the Clerk of the Court Operations Corporation to reduce the individual approved budgets of the clerks of court to ensure that the sum of the approved budgets does not exceed this statewide budget cap.

### **Fees**

This bill amends s. 28.241, F.S., revising the current distribution of filing fees for trial and appellate proceedings. The bill provides that of the first \$125 in filing fees, \$120 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. Current law provides of the first \$85 in filing fees, \$80 must be remitted to General Revenue. The section is further amended to conform the proportional change to this distribution of current filing fees.

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<sup>9</sup> Section 28.35(1)(a), F.S.

<sup>10</sup> Office of Program Policy Analysis & Government Accountability, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 01-21 (March 2007).

<sup>11</sup> Section 28.36(3)(a), F.S.

<sup>12</sup> Section 28.36(3)(b), F.S.

<sup>13</sup> Section 28.36(5)(a), F.S.

<sup>14</sup> Section 28.37(4), F.S.

<sup>15</sup> Section 28.36(4)(a), F.S.

<sup>16</sup> *Id.*

This bill amends s. 34.041, F.S., revising the current distribution of filing fees for civil actions in county court. The bill provides that the first \$120 in filing fees for all claims more than \$2,500 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. Current law provides the first \$80 must be remitted to General Revenue. The section is similarly amended to conform the proportional change to this distribution of current filing fees.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 28.241, F.S., revising the distribution of certain filing fees.

Section 2. Amends s. 34.041, F.S., revising the distribution of certain filing fees.

Section 3. Provides a statewide budget cap.

Section 4. Provides the bill will take effect July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

By revising the distribution of current filing fees, a projected \$22.9 million is redirected to the General Revenue Fund. This General Revenue has been appropriated in the House of Representatives proposed FY 2009-10 General Appropriations Act.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The redirection of filing fees noted above will decrease the amount of available revenues for the Clerks of Court.

2. Expenditures:

By reducing the statewide budget cap for the Clerks of Court, Clerk expenditures will decrease in county fiscal year 2008-09.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**