

By Senator Peaden

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1 A bill to be entitled
2 An act relating to the clerks of the court; amending
3 s. 11.90, F.S.; providing additional powers and duties
4 of the Legislative Budget Commission; amending s.
5 28.35, F.S.; revising and providing additional duties
6 of the Florida Clerks of Court Operations Corporation
7 relating to funding and budgets of the clerks of
8 court; providing duties of the Chief Financial
9 Officer; providing limitations on court-related
10 functions funded by clerks of the court from certain
11 fees, service charge, court costs, and fines;
12 specifying functions required to be included in
13 funding; specifying excluded functions from funding;
14 requiring funding of the corporation by contract with
15 the Chief Financial Officer; amending s. 28.36, F.S.;
16 revising budget procedures, requirements, criteria,
17 and limitations for preparing budget requests for
18 funding court-related functions of the clerks of the
19 court; providing revised duties and responsibilities
20 of the clerks of the court, the Florida Clerks of
21 Court Operations Corporation, and the Chief Financial
22 Officer; requiring the statewide budget cap for clerks
23 of the court performing court-related duties to be
24 included in the General Appropriations Act each year;
25 requiring the corporation to proportionately reduce
26 individual approved clerk-of-the-court budgets under
27 certain circumstances; amending s. 28.37, F.S.;
28 requiring certain excess fines, fees, charges, and
29 costs to be remitted to the Department of Revenue for

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30 deposit into the Clerks of the Court Trust Fund;
31 requiring the corporation to develop procedures and
32 reporting requirements for transfers to the trust
33 fund; requiring clerks of the court to retain as a
34 service charge a percentage of certain fees, charges,
35 and costs for certain budget purposes; authorizing the
36 corporation to request a loan of funds from the State
37 Treasury for certain purposes under certain
38 circumstances; providing an effective date.
39

40 Be It Enacted by the Legislature of the State of Florida:
41

42 Section 1. Subsection (6) of section 11.90, Florida
43 Statutes, is amended to read:

44 11.90 Legislative Budget Commission.—

45 (6) The commission shall have the power and duty to:

46 (a) Review and approve or disapprove budget amendments
47 recommended by the Governor or the Chief Justice of the Supreme
48 Court as provided in chapter 216.

49 (b) Develop the long-range financial outlook described in
50 s. 19, Art. III of the State Constitution.

51 (c) Review and approve or disapprove the budget of the
52 Florida Clerks of Court Operations Corporation.

53 (d) Review and approve the total combined budgets of the
54 clerks of court, disapprove the total combined budgets of the
55 clerks of court, or disapprove one or more budgets of specific
56 clerks of court.

57
58 ~~(e) In addition to the powers and duties specified in this~~

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59 ~~subsection, the commission shall~~ Exercise all other powers and
60 perform any other duties prescribed by the Legislature.

61 Section 2. Section 28.35, Florida Statutes, is amended to
62 read:

63 28.35 Florida Clerks of Court Operations Corporation.—

64 (1) (a) The Florida Clerks of Court Operations Corporation
65 is created as a public corporation organized to perform the
66 functions specified in this section and s. 28.36 and shall be
67 administratively housed within the Justice Administrative
68 Commission. The corporation shall be a budget entity within the
69 Justice Administrative Commission, and its employees shall be
70 considered state employees. The corporation is not subject to
71 control, supervision, or direction by the Justice Administrative
72 Commission in the performance of its duties, but the employees
73 of the corporation shall be governed by the classification plan
74 and salary and benefits plan of the Justice Administrative
75 Commission. The classification plan must have a separate chapter
76 for the corporation. All clerks of the circuit court shall be
77 members of the corporation and hold their position and authority
78 in an ex officio capacity. The functions assigned to the
79 corporation shall be performed by an executive council pursuant
80 to the plan of operation approved by the members.

81 (b) The executive council shall be composed of eight clerks
82 of the court elected by the clerks of the courts for a term of 2
83 years, with two clerks from counties with a population of fewer
84 than 100,000, two clerks from counties with a population of at
85 least 100,000 but fewer than 500,000, two clerks from counties
86 with a population of at least 500,000 but fewer than 1 million,
87 and two clerks from counties with a population of more than 1

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88 million. The executive council shall also include, as ex officio
89 members, a designee of the President of the Senate and a
90 designee of the Speaker of the House of Representatives. The
91 Chief Justice of the Supreme Court shall designate one
92 additional member to represent the state courts system.

93 (c) The corporation shall be considered a political
94 subdivision of the state and shall be exempt from the corporate
95 income tax. The corporation is not subject to the provisions of
96 chapter 120.

97 (d) The functions assigned to the corporation under this
98 section and ss. 28.36 and 28.37 are considered to be for a valid
99 public purpose.

100 (2) The duties of the corporation shall include the
101 following:

102 (a) Adopting a plan of operation.

103 (b) Conducting the election of directors as required in
104 paragraph (1)(a).

105 (c) Recommending to the Legislature changes in the various
106 court-related fines, fees, service charges, and court costs
107 established by law to ensure reasonable and adequate funding of
108 the clerks of the court in the performance of their court-
109 related functions.

110 (d) Pursuant to contract with the Chief Financial Officer,
111 establishing a process for the review and certification of
112 proposed court-related budgets submitted by the clerks of the
113 court for completeness and compliance with this section and ss.
114 28.36 and 28.37. This process shall be designed and be of
115 sufficient detail to permit independent verification and
116 validation of the budget certification. The contract shall

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117 specify the process to be used in determining compliance by the
118 corporation with this section and ss. 28.36 and 28.37 and shall
119 require the corporation to determine the minimum amount of
120 revenue necessary for each clerk of the court to efficiently
121 perform the list of court-related functions specified in
122 paragraph (4) (a) in the corporation's budget review and
123 certification process.

124 (e) Developing and certifying a uniform system of workload
125 performance measures and applicable workload performance
126 standards for the functions specified in paragraph (4)(3)(a) and
127 the service unit costs required in s. 28.36 and measures for
128 clerk performance in meeting the workload performance standards.
129 These workload performance measures and workload performance
130 standards shall be designed to facilitate an objective
131 determination of the performance of each clerk in accordance
132 with minimum standards for fiscal management, operational
133 efficiency, and effective collection of fines, fees, service
134 charges, and court costs. The corporation shall develop the
135 workload performance measures and workload performance standards
136 in consultation with the Legislature and the Supreme Court. The
137 Legislature may modify the clerk workload performance measures
138 and workload performance standards in legislation implementing
139 the General Appropriations Act or other law. When the
140 corporation finds a clerk has not met the workload performance
141 standards, the corporation shall identify the nature of each
142 deficiency and any corrective action recommended and taken by
143 the affected clerk of the court. The corporation shall notify
144 the Legislature and the Supreme Court of any clerk not meeting
145 performance standards and provide a copy of any corrective

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146 ~~action plans.~~

147 (f)~~(e)~~ Reviewing proposed budgets submitted by clerks of
148 the court using the process approved by the Chief Financial
149 Officer pursuant to paragraph (d) for the purpose of making the
150 certification in paragraph (3) (a). As part of this process, the
151 corporation shall: pursuant to s. 28.36.

152 1. Calculate the maximum authorized annual budget pursuant
153 to the requirements of s. 28.36.

154 2. Calculate the minimum amount of revenue necessary for
155 each clerk of court to efficiently perform the list of court-
156 related functions specified in paragraph (4) (a).

157 3. Prepare a cost comparison of similarly situated clerks
158 of court, based on county population and numbers of case
159 filings, using the standard list of court-related functions
160 specified in paragraph (4) (a).

161 4. Conduct an annual base budget review and an annual
162 budget exercise examining the total budget of each clerk of
163 court. The review shall examine revenues from all sources,
164 expenses of court-related functions, and expenses of non-court-
165 related functions.

166 5. Identify any proposed budget that exceeds the maximum
167 annual budget pursuant to s. 28.36(5) for the standard list of
168 court-related functions specified in paragraph (4) (a).

169 6. Identify any proposed budget that contains funding for
170 items not included on the standard list of court-related
171 functions specified in paragraph (4) (a).

172 7. Identify any clerk of court that is projected to have
173 court-related revenues insufficient to fund anticipated court-
174 related expenditures.

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175 (g)~~(f)~~ Developing and conducting clerk budget and education
176 programs.

177 (h)~~(g)~~ Publishing a uniform schedule of ~~actual~~ fees,
178 service charges, and costs charged by a clerk of the court
179 pursuant to general law.

180 (i) By August 1 of each year, submitting to the Legislative
181 Budget Commission, as provided in s. 11.90, its proposed budget
182 and the information described in paragraph (f), together with
183 certified budgets for each clerk of the court and each related
184 or subsidiary corporation. By October 1 of each year, the
185 Legislative Budget Commission shall consider the submitted
186 budgets and shall approve or disapprove the corporation's budget
187 and may approve the total combined budgets of the clerks of the
188 court, disapprove the total combined budgets of the clerks of
189 the court, or disapprove one or more budgets of specific clerks
190 of the court. If the Legislative Budget Commission fails to
191 approve a clerk of the court's budget by October 1, the clerk of
192 the court shall continue to perform the court-related functions
193 specified in paragraph (4) (a) based upon the clerk of the
194 court's approved budget for the preceding county fiscal year.

195 (3) (a) The corporation shall certify to the President of
196 the Senate, the Speaker of the House of Representatives, the
197 Chief Financial Officer, and the Department of Revenue, by
198 October 15 of each year, the amount of the approved budget for
199 each clerk of the court; the revenue projection supporting each
200 clerk of the court's budget; each clerk of the court eligible to
201 retain some or all of the state's share of fines, fees, service
202 charges, and court costs; the amount to be paid to each clerk of
203 the court from the Clerks of the Court Trust Fund within the

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204 Department of Revenue; the workload performance measures and
205 workload performance standards approved by the corporation for
206 each clerk of the court; and the performance of each clerk of
207 the court in meeting the workload performance standards. The
208 ~~court-related functions that clerks may perform are limited to~~
209 ~~those functions expressly authorized by law or court rule. Those~~
210 ~~functions include the following: case maintenance; records~~
211 ~~management; court preparation and attendance; processing the~~
212 ~~assignment, reopening, and reassignment of cases; processing of~~
213 ~~appeals; collection and distribution of fines, fees, service~~
214 ~~charges, and court costs; processing of bond forfeiture~~
215 ~~payments; payment of jurors and witnesses; payment of expenses~~
216 ~~for meals or lodging provided to jurors; data collection and~~
217 ~~reporting; processing of jurors; determinations of indigent~~
218 ~~status; and reasonable administrative support to enable the~~
219 ~~clerk of the court to carry out these court-related functions.~~

220 (b) Prior to December 1 of each year, the Chief Financial
221 Officer shall review the certifications made by the corporation
222 pursuant to paragraph (a) for the purpose of determining
223 compliance with the process approved pursuant to paragraph
224 (2) (d) and report his or her findings to the President of the
225 Senate, the Speaker of the House of Representatives, and the
226 Department of Revenue. To determine compliance with this
227 process, the Chief Financial Officer may examine the budgets
228 submitted to the corporation by the clerks of the court. The
229 ~~functions that clerks may not fund from state appropriations~~
230 ~~include:~~

- 231 1. ~~Those functions not specified within paragraph (a).~~
- 232 2. ~~Functions assigned by administrative orders which are~~

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233 ~~not required for the clerk to perform the functions in paragraph~~
234 ~~(a).~~

235 ~~3. Enhanced levels of service which are not required for~~
236 ~~the clerk to perform the functions in paragraph (a).~~

237 ~~4. Functions identified as local requirements in law or~~
238 ~~local optional programs.~~

239 (4) (a) The list of court-related functions clerks of the
240 court may fund from fines, fees, service charges, and court
241 costs is limited to those functions expressly authorized by law
242 or court rule. Those functions shall include the following: case
243 maintenance; records management; court preparation and
244 attendance; processing the assignment, reopening, and
245 reassignment of cases; processing of appeals; collection and
246 distribution of fines, fees, service charges, and court costs;
247 processing of bond forfeiture payments; payment of jurors and
248 witnesses; payment of expenses for meals or lodging provided to
249 jurors; data collection and reporting; processing of jurors;
250 determinations of indigent status; and reasonable administrative
251 support costs to enable the clerks of the court to carry out
252 these court-related functions.

253 (b) The list of functions clerks of the court may not fund
254 from fines, fees, service charges, and court costs include:

255 1. Any function not specified in paragraph (a).

256 2. Functions assigned by administrative orders that are not
257 required for the clerk of the court to perform the functions
258 specified in paragraph (a).

259 3. Enhanced levels of service which are not required for
260 the clerk of the court to perform the functions specified in
261 paragraph (a).

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262 4. Functions identified as local requirements in law or
263 local optional programs.

264 (5) The corporation shall be funded pursuant to contract
265 with the Chief Financial Officer ~~prepare a legislative budget~~
266 ~~request for the resources necessary to perform its duties,~~
267 ~~submit the request pursuant to chapter 216,~~ and be funded as a
268 budget entity in the General Appropriations Act. The corporation
269 may hire staff and pay other expenses from state appropriations
270 as necessary to perform the official duties and responsibilities
271 of the corporation as described by law.

272 (6) ~~(5)~~ (a) The corporation shall submit an annual audited
273 financial statement to the Auditor General in a form and manner
274 prescribed by the Auditor General. The Auditor General shall
275 conduct an annual audit of the operations of the corporation,
276 including the use of funds and compliance with the provisions of
277 this section and ss. 28.36 and 28.37.

278 (b) Certified public accountants conducting audits of
279 counties pursuant to s. 218.39 shall report, as part of the
280 audit, whether or not the clerks of the courts have complied
281 with the requirements of this section and s. 28.36. In addition,
282 each clerk of court shall forward a copy of the portion of the
283 financial audit relating to the court-related duties of the
284 clerk of court to the Supreme Court. The Auditor General shall
285 develop a compliance supplement for the audit of compliance with
286 the budgets and applicable performance standards certified by
287 the corporation.

288 Section 3. Section 28.36, Florida Statutes, is amended to
289 read:

290 (Substantial rewording of section. See

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291 s. 28.36, F.S., for present text.)

292 28.36 Budget procedure.—A budget procedure is established
293 for preparing budget requests for funding court-related
294 functions of the clerks of the court.

295 (1) Only those functions on the standard list developed
296 pursuant to s. 28.35(4) (a) may be funded from fines, fees,
297 service charges, and court costs retained by the clerks of the
298 court. A clerk of the court may not use fines, fees, service
299 charges, and court costs in excess of the maximum budget amounts
300 as established in subsection (5).

301 (2) Each clerk of the court shall prepare a budget request
302 for the county fiscal year beginning October 1 and ending
303 September 30th of the ensuing year. The proposed budget shall be
304 prepared, summarized, and submitted by the clerk of the court in
305 each county to the Florida Clerks of Court Operations
306 Corporation in the manner and form prescribed by the corporation
307 to meet the requirements of law. The corporation shall display
308 on its public web site the proposed budgets and the approved
309 budgets for each clerk of the court. The budget requests must be
310 provided to the corporation by October 1 of each year.

311 (3) Each proposed budget shall further conform to the
312 following requirements:

313 (a) On or before October 1 for each fiscal year thereafter,
314 the proposed budget shall be prepared, summarized, and submitted
315 by the clerk of the court in each county to the corporation in
316 the manner and form prescribed by the corporation. However, at a
317 minimum, the proposed budgets shall include for each clerk of
318 the court the information required in s. 216.023(4) (a). The
319 proposed budget must provide detailed information on the

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320 anticipated revenues available and expenditures necessary for
321 the performance of the standard list of court-related functions
322 of the clerk of the court's office developed pursuant to s.
323 28.35(4) (a) for the county fiscal year beginning the following
324 October 1. The corporation shall also prepare its proposed
325 budget by October 1 of each year, which shall also contain the
326 minimum information required in s. 216.023(4) (a), and provide a
327 summary listing of clerks of the court who have not met all
328 workload performance measures and the specific measures that
329 each clerk of the court did not achieve.

330 (b) The proposed budget must be balanced, such that the
331 total of the estimated revenues available must equal or exceed
332 the total of the anticipated expenditures. These revenues
333 include the following: cash balances brought forward from the
334 prior fiscal period; revenue projected to be received from fees,
335 service charges, court costs, and fines for court-related
336 functions during the fiscal period covered by the budget; and
337 supplemental revenue that may be requested pursuant to
338 subsection (4). The anticipated expenditures must be itemized as
339 required by the corporation, pursuant to contract with the Chief
340 Financial Officer.

341 (c) The proposed budget may include a contingency reserve
342 not to exceed 10 percent of the total budget, provided that,
343 overall, the proposed budget does not exceed the limits
344 prescribed in subsection (5).

345 (4) If a clerk of the court estimates that available funds
346 plus projected revenues from fines, fees, service charges, and
347 costs for court-related services are insufficient to meet the
348 anticipated expenditures for the standard list of court-related

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349 functions in s. 28.35(4) (a) performed by his or her office, the
350 clerk of the court shall report the revenues deficit to the
351 corporation in the manner and form prescribed by the corporation
352 pursuant to contract with the Chief Financial Officer. The
353 corporation shall verify that the proposed budget is limited to
354 the standard list of court-related functions in s. 28.35(4) (a).

355 (a) If the corporation verifies that the proposed budget is
356 limited to the standard list of court-related functions in s.
357 28.35(4) (a) and revenue deficit is projected, a clerk of the
358 court seeking to retain revenues pursuant to this subsection
359 shall increase all fees, service charges, and any other court-
360 related clerk of the court fees and charges, and charges to the
361 maximum amounts specified by law or the amount necessary to
362 resolve the deficit, whichever is less. If after increasing
363 fees, service charges, and any other court-related clerk of the
364 court fees and charges to the maximum amounts specified by law,
365 a revenue deficit is still projected, the corporation shall,
366 pursuant to the terms of the contract with the Chief Financial
367 Officer, certify a revenue deficit and notify the Department of
368 Revenue that the clerk is authorized to retain revenues, in an
369 amount necessary to fully fund the projected revenue deficit,
370 which he or she would otherwise be required to remit to the
371 Department of Revenue for deposit into the Clerks of the Court
372 Trust Fund pursuant to s. 28.37. If a revenue deficit is
373 projected for that clerk of the court after retaining all of the
374 projected collections from the court-related fines, fees,
375 service charges, and costs, the Department of Revenue shall
376 certify the amount of the revenue deficit amount to the
377 Executive Office of the Governor and request release authority

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378 for funds appropriated for this purpose from the Clerks of the
379 Court Trust Fund. Notwithstanding provisions of s. 216.192
380 related to the release of funds, the Executive Office of the
381 Governor may approve the release of funds appropriated to
382 resolve projected revenue deficits in accordance with the
383 notice, review, and objection procedures set forth in s. 216.177
384 and shall provide notice to the Chief Financial Officer. The
385 Department of Revenue shall request monthly distributions from
386 the Chief Financial Officer in equal amounts to each clerk of
387 the court certified to have a revenue deficit, in accordance
388 with the releases approved by the Governor.

389 (b) If the Chief Financial Officer finds that the court-
390 related budget proposed by a clerk of the court includes
391 functions not included in the standard list of court-related
392 functions in s. 28.35(4)(a), the Chief Financial Officer shall
393 notify the clerk of the court of the amount of the proposed
394 budget not eligible to be funded from fees, service charges,
395 costs, and fines for court-related functions and shall identify
396 appropriate corrective measures to ensure budget integrity. The
397 clerk of the court shall then immediately discontinue all
398 ineligible expenditures of court-related funds for this purpose
399 and reimburse the Clerks of the Court Trust Fund for any
400 previously ineligible expenditures made for non-court-related
401 functions and shall implement any corrective actions identified
402 by the Chief Financial Officer.

403 (5) The Legislative Budget Commission may approve increases
404 to the maximum annual budgets approved for individual clerks of
405 the court pursuant to this section for court-related duties, if:

406 (a) The additional funding is necessary to pay the cost of

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407 performing new or additional functions required by changes in
408 law or court rule. Before the Legislative Budget Commission may
409 approve an increase in the maximum annual budget of any clerk of
410 the court under this subsection, the corporation must provide
411 the commission with a statement of the impact of the proposed
412 budget changes on state revenues, and evidence that the
413 respective clerk of the court is meeting or exceeding the
414 established workload performance standards for measures on the
415 fiscal management, operational efficiency, and effective
416 collection of fines, fees, service charges, and court costs; or
417 (b) The additional funding is necessary to pay the cost of
418 supporting increases in the number of judges or magistrates
419 authorized by the Legislature. Before the Legislative Budget
420 Commission may approve an increase in the maximum annual budget
421 of any clerk of the court under this paragraph, the corporation
422 must provide the commission with a statement of the impact of
423 the proposed budget changes on state revenues; evidence that the
424 respective clerk of the court is meeting or exceeding the
425 established performance standards for measures on the fiscal
426 management, operational efficiency, and effective collection of
427 fines, fees, service charges, and court costs; and a proposed
428 staffing model including the cost and number of staff necessary
429 to support each new judge or magistrate. The total amount of
430 increases approved by the Legislative Budget Commission for each
431 county fiscal year shall not exceed an amount equal to 2 percent
432 of the maximum annual budgets approved pursuant to this section
433 for all clerks of the court, in the aggregate, for that same
434 county fiscal year.

435 (6) The corporation may submit proposed legislation to the

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436 Governor, the President of the Senate, and the Speaker of the
437 House of Representatives no later than November 1 in any year
438 for approval of clerk of the court budget request amounts
439 exceeding the restrictions in this section for the following
440 October 1. If proposed legislation is recommended, the
441 corporation shall also submit supporting justification with
442 sufficient detail to identify the specific proposed expenditures
443 that would cause the limitations to be exceeded for each
444 affected clerk of the court and the estimated fiscal impact on
445 state revenues.

446 (7) It is the intent of the Legislature that the budget and
447 appropriations functions of and related to the clerks of court
448 shall be part of the state budgeting process by the 2011-2012
449 fiscal year.

450 Section 4. Notwithstanding s. 28.36, Florida Statutes, the
451 statewide budget cap for clerks of the court performing court-
452 related duties shall be included each year in the General
453 Appropriations Act. The Florida Clerks of Court Operations
454 Corporation shall proportionately reduce individual approved
455 budgets of clerks of the court to ensure that the sum of the
456 approved budgets does not exceed this statewide cap.

457 Section 5. Section 28.37, Florida Statutes, is amended to
458 read:

459 28.37 Fines, fees, service charges, and costs remitted to
460 the state.—

461 (1) Pursuant to s. 14(b), Art. V of the State Constitution,
462 selected salaries, costs, and expenses of the state courts
463 system and court-related functions shall be funded from a
464 portion of the revenues derived from statutory fines, fees,

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465 service charges, and costs collected by the clerks of the court.

466 (2) Except as otherwise provided in ss. 28.241 and 34.041,
467 all court-related fines, fees, service charges, and costs above
468 what is needed to fund the court-related budget of the clerk of
469 the court ~~are considered state funds and~~ shall be remitted by
470 the clerk of the court to the Department of Revenue for deposit
471 into the Clerks of the Court Trust Fund ~~within the Justice~~
472 ~~Administrative Commission.~~ The Florida Clerks of Court
473 Operations Corporation shall develop the procedures and
474 reporting requirements to accomplish the transfer to the trust
475 fund. However, 10 percent of all court-related fines collected
476 by the clerk shall be deposited into the clerk's Public Records
477 Modernization Trust Fund to be used exclusively for additional
478 clerk court-related operational needs and program enhancements.

479 (3) The clerk of the court shall retain a service charge of
480 7 percent of all court-related filing fees, service charges, and
481 costs collected by the clerk of the court, which shall be
482 applied to the clerk of the court's court-related budget adopted
483 by the Florida Clerks of Court Operations Corporation.

484 Section 6. The Chair of the Florida Clerks of Court
485 Operations Corporation may request a loan of funds pursuant to
486 s. 215.18, Florida Statutes, notwithstanding the ability of the
487 Clerks of the Court Trust Fund to repay the loan by the end of
488 the fiscal year, if, at any time during the 2010-2011 fiscal
489 year, the Revenue Estimating Conference projects that revenue
490 deposited into the Clerks of the Court Trust Fund will be less
491 than 98 percent of the amount appropriated from the trust fund
492 in the General Appropriations Act for 2010-2011 fiscal year.

493 Section 7. This act shall take effect upon becoming a law.