

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 382

INTRODUCER: Senator Hooper

SUBJECT: Clerks of the Court

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 382 specifies that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply to services for performing services related to a “court record.” This will allow a clerk of court to retain the entire service charge collected for performing a service not related to a court record.

The bill revises the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that \$20 of the \$100 fee be transferred to the General Revenue Fund. Thus, the full \$100 filing fee will be retained by the clerk.

The bill revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system. The current procedure provides for *pre-imburement* in which clerks send a quarterly funding estimate of their costs to the Florida Clerks of Court Operations Corporation (CCOC) for review. The CCOC completes its review, and submits the estimate to the Justice Administrative Commission (JAC) for review, verification that the funds are available, and processing of the quarterly payment. The bill changes the payment process to a *reimbursement* process for actual costs incurred in the previous quarter. Each clerk must attest to the actual costs to compensate jurors and submit a request for reimbursement to the CCOC. The CCOC must review the requests and forward them to the JAC, which in turn submits a request for payment to the Chief Financial Officer.

The bill appears to have an indeterminate fiscal impact.

The bill takes effect July 1, 2021.

II. Present Situation:

Clerks of the Court - In General

The State Constitution establishes the office of clerk of the circuit court in each of the state's 67 counties. Each clerk is elected by the voters to a 4-year term. The State Constitution further provides that the clerk's duties may be divided by special or general law between two officers. Under that arrangement, one serves as clerk of the court and one serves as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.¹ Nearly all counties have a single clerk performing both court-related services and county-related services.

Florida Clerks of Court Operations Corporation

The Legislature created the Florida Clerks of Court Operations Corporation (CCOC) in 2003. It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state. All clerks of the circuit court are members and hold their position and authority as ex officio members. The responsibilities assigned to the corporation are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.²

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.³ The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.⁴

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; *and*

¹ FLA. CONST. art. V, s. 16 and art. VIII, s. (1)(d).

² Section 28.35(1), F.S.

³ Florida Clerks of Court Operations Corporation, *Welcome to Florida Clerks of Court Operations Corporation (CCOC)*, available at <https://flccoc.org/>.

⁴ Section 28.35(2)(c), (d), (e), and (f), F.S.

- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.⁵

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001⁶ within the Department of Revenue (DOR). The Trust Fund was transferred to the JAC in 2009 when the clerks' budget was placed in the state budget process. The Trust Fund was transferred back to the DOR in 2013 when the clerks' budget was removed from the GAA. The Trust Fund exists as a one sentence item in the statutes with no mention of a purpose.

According to the CCOC, the Trust Fund is used as a repository for funds from counties that have a projected revenue surplus. Section 28.37(2), F.S., provides that, since November 1, 2013, all fines, fees, service charges, and costs that are collected by the clerks for the previous month which exceed one-twelfth of the clerks' total budget for performing court-related functions must be remitted to DOR for deposit into the Clerks of the Court Trust Fund. Those funds are distributed by DOR to clerks in counties that have a projected revenue deficit. The CCOC also uses the Trust Fund to annually reconcile the clerks' expenditures. In the reconciliation process at the end of the year, a clerk's total revenues are compared to total expenditures. Some clerks will receive additional money to meet expenses, and other clerks will be required to return money because he or she had a surplus of revenue after covering expenses.

Additionally, during the 2019 legislative session, s. 28.37, F.S., was amended to require:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million be transferred to the General Revenue Fund;
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed \$20 million; and
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs be transferred to the General Revenue Fund.

Service Charges Collected by a Clerk of Court

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.⁷ Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are "court-related" functions, while other services are "county-related" functions performed by the clerk in its capacity as County Recorder,⁸ such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested. For example, s. 28.24(3), F.S., describes a charge for certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of this record is a court-related function, while if the

⁵ Section 28.35(2)(f), F.S.

⁶ Section 213.131, F.S.

⁷ Section 28.24, F.S.

⁸ See s. 28.222(1), F.S.

requested record is from the county official records, the clerk's providing of certified copies of this record is a county-related function.

In 2008, the Legislature amended s. 28.24, F.S., increasing many service charges for both county- and court-related functions.⁹ Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the Clerks of Court Operations Corporation (CCOC)¹⁰ to increase the court clerk's budgets.¹¹ As a result, court clerks began retaining services charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the DOR for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.¹²

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 specified charge amounts) to the DOR for deposit into the General Revenue fund. The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments were to be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to collect a \$250 filing fee for appeals from the county to circuit courts and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.¹³ Clerks were required to remit \$50 of these fees to the DOR for deposit into the General Revenue Fund.¹⁴ Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.¹⁵

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.¹⁶ The amendment required the clerks to remit \$80 from both fees to the DOR for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the DOR for deposit into the Clerks of Court Trust Fund.¹⁷ Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.¹⁸ But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks'

⁹ Chapter 2008-111, s. 6, Laws of Fla.

¹⁰ The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. Section 28.35, F.S.

¹¹ Chapter 2008-111, s. 47, Laws of Fla.

¹² Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 2 (January 29, 2021).

¹³ *See* Ch. 2008-111, s. 8, Laws of Fla.

¹⁴ *See Id.*

¹⁵ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

budgets based on increased revenue generated by the amendments.¹⁹ As a result, the new money collected in excess of the \$80 filing fee, i.e. the \$20 retained from the fees for appeals to the DCAs or Supreme Court, sent to the DOR for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, all of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court was deposited in the General Revenue Fund.²⁰

In 2017, the Legislature again amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the DOR for deposit in the General Revenue Fund.²¹ But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fee to the DOR for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.²²

When the Legislature amended s. 28.241(2), F.S., in 2019, the clerks were required to remit \$20 from the \$280 filing fee for appeals from the county court to the circuit courts to the DOR for deposit into the General Revenue Fund.²³ The 2019 amendments to, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁴

Effective January 1, 2021, most appeals from the county court are filed in the district court of appeal, rather than with the circuit court.²⁵

Jury Management

Court clerks' responsibilities include managing the jury process. This includes determining the qualifications of jurors, issuing jury summons, providing selection lists, reporting, and compensating jurors when necessary to prevent financial hardship.²⁶ It is estimated that Florida clerks summon almost 2 million jurors annually.²⁷

Juror Cost Reimbursement

Under Revision 7 to article V of the Florida Constitution, juror compensation and related expenses were initially a state court system responsibility and paid for with state revenues appropriated by general law.²⁸ The 2004 Legislature amended s. 28.35, F.S., to require the clerks to pay the payment to jurors and witnesses as well as juror meals and lodging.²⁹ Each clerk prepared quarterly estimates of needed funds for the Office of State Court Administrator (OSCA). Based on these estimates, OSCA approved the payment for each clerk. In 2008, the

¹⁹ See Ch. 2008-111, s. 47, Laws of Fla.

²⁰ Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

²¹ Chapter 2017-126, s 2, Laws of Fla.

²² Florida Clerks of Court Operations Corporation, *Senate Bill 382 Analysis*, p 4 (January 29, 2021).

²³ Chapter 2019-58, s 8, Laws of Fla.

²⁴ Id. at s. 30.

²⁵ Chapter 2020-61, Laws of Fla.

²⁶ See s. 40.001, F.S.

²⁷ Florida Clerks of Court Operations Corporation, *Senate Bill 590 Analysis* (February 6, 2020), available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29742>.

²⁸ Chapter 2003-402, s. 40, Laws of Fla.

²⁹ Chapter 2004-265, Laws of Fla.

Legislature amended the law to clarify that the clerks were financially responsible for paying juror meals and lodging as well as juror and witness payments.³⁰

In recognition of clerk revenue deficits, the 2016 Legislature passed a provision to reimburse the clerks for juror expenses and jury-related personnel costs during the 2016-2017 fiscal year.³¹ The Legislature also appropriated \$11.7 million in recurring general revenue in the General Appropriations Act within the Justice Administrative Commission to support funding these jury expenses.

Budget Procedure for Payment of Jury Costs

The Justice Administration Commission (JAC) is required by s. 40.29(5), F.S., to provide funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs. As noted above, since 2016, the Legislature has provided \$11.7 million annually from General Revenue to cover the projected costs of managing the jury process.³² The funds are released quarterly.

The process established in s. 40.29, F.S., for clerks to submit information to the JAC to request funding, has been modified slightly from statute by agreement between the clerks and the CCOC. The process is as follows:

- Each clerk of the circuit court forwards to the CCOC a *quarterly estimate* of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the *upcoming* quarter. Each clerk must include a signed and dated certification letter by the 10th of the month immediately before the beginning of the requested quarter.
- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and processes the payment through the Department of Financial Services for pre-imburement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based upon the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer will then issue the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA.

³⁰ Chapter 2008-111, Laws of Fla

³¹ Chapter 2016-62, s. 66, Laws of Fla.

³² For the Fiscal Year 2019-2020 appropriation, see ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . \$11,700,000).

III. Effect of Proposed Changes:

Service Charges

The bill amends various service charges in s 28.24, F.S., to provide that service charge related to a “court record” is required to have a designated portion of the service charge transferred to the General Revenue Fund. A service charge not related to a court record is fully retained by the clerk. No service charge is increased or decreased by the bill.

The bill defines the term “court record” to mean the contents of a court file, to include:

- Progress dockets and other similar records generated to document activity in a case.
- Transcripts filed with the clerk.
- Documentary exhibits in the custody of the clerk.
- Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.
- Electronic records, video recordings, and stenographic tapes of court proceedings.

The bill amends s. 28.222, F.S., regarding the clerk’s role as county recorder, to provide that a service charge related to an instrument recorded in the Official Records is fully retained by the clerk, except that a service charge related to a court record or a court function in the Official Records is subject to the partial distribution to the General Revenue Fund.

Appellate Filing Fees

The bill amends s. 28.241, F.S., to provide that the \$20 distribution to General Revenue from the filing fee paid to a clerk of court of the lower court when filing an appeal does not apply to an appeal from the county court to the circuit court. Thus, the bill provides that a clerk of court retains the entire \$100 fee.

The bill also clarifies in that subsection that the \$100 filing fee payable to the clerk of court as the lower court in the appeal is in addition to the filing fee payable to the appellate court.

Jury Management

The bill modifies the process by which clerks receive funds for jury management by changing the current practice under which clerks receive *pre-imburements* for their costs to one which they will receive *reimbursements* for the costs they have incurred.

The new process by which the clerks will receive reimbursement for jury-related costs is as follows:

- Each clerk of the court shall submit a request for reimbursement to the Florida Clerks of Court Operations Corporation (CCOC) within 20 days after each quarter attesting to the clerk’s actual costs to compensate jurors, to pay for meals or lodging provided to jurors, and to pay jury-related personnel costs.
- The CCOC will review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management.

- The CCOC will then forward the request for reimbursement to the Justice Administrative Commission (JAC) unless the requests total more than is available, in which case the CCOC will adjust the cumulative total to match the available funds before submittal.
- The JAC will then review the amount requested for the most recently completed quarter to determine if funds are available and submit a request for payment to the Chief Financial Officer.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate and likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.222, 28.24, 28.241, 40.29, 27.52, 28.22205, 28.246, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 569.23, and 712.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.