

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 903 Clerks of the Circuit Court
SPONSOR(S): Judiciary Committee, Barnaby and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Keith
2) Judiciary Committee	21 Y, 0 N, As CS	Brascomb	Kramer
3) Appropriations Committee	25 Y, 0 N	Smith	Pridgeon

SUMMARY ANALYSIS

Each of the 67 Florida counties has a clerk of court, which is the elected constitutional officer who oversees judiciary functions as the clerk for the county and circuit courts. The clerks collect court costs and fines related to court dispositions and are authorized to charge fees for performing various functions. A portion of these fines and fees collected are retained by the clerks for the purpose of funding the court-related functions of the clerk. A person who owes fines and fees to the clerk, and who qualifies as indigent, may ask the clerk of court to allow him or her to enter into a payment plan.

In 2003, the Florida Clerks of Court Operations Corporation (CCOC) was created to perform various functions as prescribed by law. Initially, the CCOC reviewed and certified proposed budgets from each clerk. The CCOC is currently responsible for approving the combined budgets submitted by the clerks, and ensuring that the total combined budgets of all 67 clerks does not exceed the total estimated revenues.

CS/HB 903 requires the CCOC to:

- Establish and manage a reserve within the Clerks of the Court Trust Fund of an amount not exceeding 16 percent of the total budget authority for the clerks during the county fiscal year; and
- Develop and establish uniform payment plan forms for use in all 67 counties.

The bill makes permanent the 50 percent split of cumulative excess funds between the clerks and the State, removing the language that would require clerks to transfer all cumulative excess funds to the General Revenue Fund effective February 1, 2023. The bill also removes the current statutory cap of \$20 million for the total cumulative excess balance that can remain in the Clerks of the Court Trust Fund.

The bill also requires driver license suspension orders to inform a person that he or she may contact the clerk of the court to establish a payment plan to make partial payments for fines, fees, service charges, and court costs.

The bill may have a negative, yet indeterminate fiscal impact to the General Revenue Fund.
The bill may have a positive, yet indeterminate fiscal impact to the clerks of the court.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

History of Clerk of Courts Funding

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. It also provides the source of funding for the state court system.

In 1998, Florida voters approved Revision 7 to Article V of the Florida Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued paying for facilities, communications, and security for the court system entities. Art. V, s. 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for.....the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings.¹ The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Art. V, s. 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Art. V, s. 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.

Since the implementation of Revision 7, the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

¹ S. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

Clerk of Court Funding: 2004-2009

In 2004, legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget, which was then submitted, to the CCOC, on or before August 15 of each fiscal year. The Legislature created the CCOC to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the CCOC.²

The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.³ Upon review and certification of the individual clerk of court budgets by the CCOC, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the CCOC. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue (DOR) would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the DOR Clerks of the Court Trust Fund.⁴

Additionally, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the DOR for deposit into the DOR Clerks of the Court Trust Fund.⁵ The DOR would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

The CCOC, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the DOR, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the DOR; the performance measures and standards approved by the CCOC for each clerk; and the results of each clerk meeting performance standards.⁶

The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budget approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.⁷

The LBC is composed of seven members appointed by the President of the Senate, and seven members appointed by the Speaker of the House of Representatives.⁸ The LBC, among other things, approves budget amendments during the interim between sessions.

Clerk of Court Funding: 2009-2013

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the CCOC into the state

² S. 28.35, F.S.

³ S. 28.36(3), F.S. (2008)

⁴ S. 28.36(4), F.S. (2008)

⁵ S. 28.37(2), F.S. (2008)

⁶ S. 28.35(1)(f), F.S. (2008)

⁷ See s. 28.36(6), F.S. (2008)

⁸ See generally s. 11.90, F.S.

budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the CCOC became state employees.

Ch. 2009-204, L.O.F., provided that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the DOR for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).⁹ The CCOC, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the CCOC was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to ch. 216, F.S., to be funded as a budget entity in the General Appropriations Act.¹⁰ Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.¹¹ The CCOC was then required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs were higher than a clerk's peers, the clerk was required to justify the increased costs.

The law required the CCOC to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in Fiscal Year 2010-11, the CCOC was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the CCOC could make a request to the Governor for a trust fund loan pursuant to ch. 215, F.S. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.¹²

The Chief Financial Officer (CFO) reviewed unit costs proposed by the CCOC and made recommendations to the Legislature, and if necessary, could conduct an audit of a clerk or the CCOC. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the General Appropriations Act.

Clerk of Court Funding: 2013-2018

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the General Appropriations Act.

Rather, the clerks of court worked together with the CCOC, the LBC, and the JAC in requesting, modifying, and finalizing a budget. In 2017, however, the Legislature removed the LBC from the process of reviewing the clerks' budgets.¹³

Clerk of Court Funding – Current Process

In 2019, the Legislature amended ss. 28.35 and 28.36, F.S., to provide that, in addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Article V Revenue Estimating Conference, the combined budget for the clerks of court may also include:

⁹ S. 28.37(2), F.S.

¹⁰ Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. See s. 216.023(8), F.S.

¹¹ Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. S. 28.36, F.S. (2011).

¹² S. 28.36(10), F.S. (2011)

¹³ Ch. 2017-126, s. 1, Laws of Fla.

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

The Legislature also amended s. 28.37, F.S.—which previously required the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the total amount estimated by the Article V Revenue Estimating Conference to be transferred to the General Revenue Fund—as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million will 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 will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of the Court Trust Fund after the transfer may not exceed \$20 million beyond the original revenue projection.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

Florida Clerks of Court Operations Corporation (CCOC)

All clerks of the circuit court are still members of the CCOC and hold their position and authority in an ex officio capacity. The CCOC's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the CCOC and clerk workload performance in meeting the workload performance standards;
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks;
- Approving proposed budgets submitted by clerks of the court;
- Developing and conducting clerk educational programs; and
- Preparing and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees by January 1 of each year on the operations and activities of the CCOC and detailing the budget development for the clerks of the court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk of court.¹⁴

Payment Plans

As part of the statutory revisions that originated from Revision 7 of Art. V, of the Florida Constitution, the Legislature created s. 28.246, F.S., which requires clerks to accept partial payments for unpaid court-related fees, charges, and costs following the terms of an established payment plan. Clerks design payment plans to meet the needs of the individuals that owe obligations to the state. Most clerks attempt to customize or tailor a payment plan to fit the needs of the customer. Because many defendants are not aware that the payment is due on the day of sentencing, some clerks currently have trouble setting payment plans.

The law does not require a recently released individual to report to the clerk's office to set up a payment plan. As a result, much of the assessed fines and court costs in the Circuit Criminal Division go unpaid for years.

Effect of the Bill

¹⁴ S. 28.35(2), F.S.

CS/HB 903 amends s. 28.37, F.S., to make permanent the 50 percent share of cumulative excess funds between the clerks and the General Revenue Fund. The bill removes the provision in current statute that would direct the clerks to transfer all cumulative excess funds from the Clerks of the Court Trust Fund to the General Revenue Fund effective February 1, 2023. The bill also removes the current statutory cap of \$20 million for the total cumulative excess balance that can remain in the Clerks of the Court Trust Fund.

The bill also amends s. 28.36, F.S., to direct the CCOC to establish and manage a reserve within the Clerks of the Court Trust Fund of an amount not exceeding 16 percent of the total budget authority for the clerks during the county fiscal year. A minimum of 10 percent of the cumulative excess funds retained by the clerk must be held in reserve until such funds reach an amount equal to the 16 percent. The reserve fund may only be used to:

- Offset a current deficit between the revenue available and the original budget authority;
- Provide funding for an emergency pursuant to s. 252.34(4), F.S.;
- Provide funds in the development of the total aggregate budget of the clerks to ensure that a minimum continuation budget¹⁵ is met.

Under s. 28.36, F.S., the CCOC may request a budget amendment for release of the reserve funds, in accordance with procedures in s. 216.292, F.S.

The bill amends s. 28.37, F.S., to modify the clerk's budgetary process to allow supplemental appropriations to be included in the clerks combined budget. The bill defines "Cumulative Excess" and "Original Revenue Projection." These terms codify the current process regarding the distribution of fine, fee, service charge and court cost revenues collected in excess of the total amount estimated by the Article V Revenue Estimating Conference.

CS/HB 903 requires clerks, through the CCOC, to establish uniform payment plan forms for fees, service charges, court costs, and fines for individuals who apply for a payment plan. The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment. The form must be developed by October 1, 2021, and put into use by all clerks by January 1, 2022. Under s. 28.246, F.S., if a person is incarcerated, he or she must apply to the clerk for enrollment in a payment plan within 30 calendar days after release.

The bill amends s. 318.15, F.S., to require that driver license suspension orders must inform the person that they may contact the clerk of the court to establish a payment plan to make partial payments for fines, fees, service charges, and court costs.

The bill provides an effective date of October 1, 2021.

¹⁵ A minimum continuation budget is the budget approved for the current county fiscal year or some lesser amount adopted by CCOC.
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B. SECTION DIRECTORY:

- Section 1.** Amends s. 28.246, F.S., related to payment of court-related fines or other monetary penalties, fees, service charges, and court costs; partial payments; distribution of funds.
- Section 2.** Amends s. 28.35, F.S., related to Florida Clerks of Court Operations Corporation.
- Section 3.** Amends s. 28.36, F.S., related to the budget procedure of the clerks.
- Section 4.** Amends s. 28.37, F.S., related to fines, court-related fees, service charges, and court costs remitted to the state.
- Section 5.** Amends s. 28.42, F.S., related to manual of filing fees, charges, costs, and fines; payment plan form.
- Section 6.** Amends s. 318.15, F.S., related to failure to comply with civil penalty or to appear; penalty.
- Section 7.** Amends s. 318.20, F.S., related to notification; duties of the Florida Department of Highway Safety and Motor Vehicles.
- Section 8.** Amends s. 322.245, F.S., related to suspension of license upon failure of person charged with specified offenses.
- Section 9.** Amends s. 775.083, F.S., related to fines.
- Section 10.** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered a prior version of the bill with similar language on March 5, 2021, and determined it may have a negative, yet indeterminate fiscal impact on the state General Revenue Fund.¹⁶ See *Fiscal Comments*.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference considered a prior version of the bill with similar language on March 5, 2021, and determined it may have a positive, yet indeterminate fiscal impact on the clerks of the court.¹⁷ See *Fiscal Comments*.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Currently, the clerks may retain 50 percent of the cumulative excess of fines and fees collected in a fiscal year beyond the original revenue projection within the Clerks of the Court Trust Fund, and must remit the other 50 percent for deposit into the state General Revenue Fund. If the Trust Fund accumulates a balance of \$20 million beyond the original revenue projection, then 100 percent of the cumulative excess collected afterward must be remitted to the General Revenue fund, until the balance of the Trust Fund falls below the \$20 million cumulative excess retainment cap.

¹⁶ Revenue Estimating Conference, *HB 903/SB 838*, March 5, 2021, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf (last visited March 29, 2021).

¹⁷ *Id.*

The bill removes the \$20 million cumulative excess retainment cap on the Clerks of the Court Trust Fund, which may reduce revenues for the General Revenue Fund, to the extent that the balance in Clerks of the Court Trust Fund is equal to or greater than \$20 million beyond the original revenue projection.

Additionally, the bill makes permanent the 50 percent split of cumulative excess collections, removing current language that would direct all cumulative excess fines and fees to the General Revenue Fund effective February 1, 2023. The removal of this provision may reduce state revenues beginning in Fiscal Year 2022-23 and beyond, by an indeterminate amount. If there is no excess revenue, then the impact would be zero. If there is excess revenue, the transfer would be half instead of all – resulting in a negative, yet indeterminate impact to deposits into the General Revenue Fund and a positive, yet indeterminate impact to deposits into the Clerks of Court Trust Fund.¹⁸

The provisions in the bill relating to changes of payment plan options will likely result in a positive, yet indeterminate impact to collections of the Clerks Fine and Forfeiture Funds.¹⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2021, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions modifying the duties of the Florida Clerks of Court Operations Corporation relating to funding of clerks' offices.
- Removed a provision allowing a clerk of court to request a budget increase due to financial obligations imposed on court-related functions by a county or by administrative court order.
- Changed the effective date of portions of the bill to October 1, 2021.
- Made technical changes to improve clarity and readability.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

¹⁸ *Id.*

¹⁹ *Id.*