

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 397 Court Fiscal Administration
SPONSOR(S): Justice Appropriations Subcommittee, Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Justice Appropriations Subcommittee	14 Y, 0 N, As CS	Smith	Keith
2) Judiciary Committee	19 Y, 0 N	Brascomb	Kramer
3) Appropriations Committee	26 Y, 0 N	Smith	Pridgeon

SUMMARY ANALYSIS

Each of the 67 Florida counties has a clerk of court, who 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 to perform 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.

Under current law, a person's driver license can be suspended for various reasons, including:

- Failure to pay a court fee or fine;
- Failure to comply with or appear at a traffic summons; and
- Having unpaid citations in another state.

In 2003, the Florida Legislature created the Florida Clerks of Court Operations Corporation (CCOC) to provide budget support to the clerks. 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 397 amends several statutes which increase revenues for the clerks of the court, provide additional funding request options for the clerks, and enhance payment options to help reduce driver license suspensions. Specifically, the bill:

- Requires the CCOC to develop a formula to estimate the total cost associated with clerk support for circuit and county judges statewide;
- Requires the CCOC to submit funding recommendations to the Legislature for the reimbursement of costs related to additional trial court judgeships and involuntary commitment fees;
- Clarifies the minimum payment criteria for uniform payment plans, and allows the clerks to review property records when determining the indigency status of an applicant; and
- Directs the Department of Highway Safety and Motor Vehicles to ensure the clerks have the ability to reinstate drivers licenses that have been suspended for a failure to pay court obligations.

The bill would have an indeterminate fiscal impact to revenues deposited into the General Revenue Fund. Additionally, the bill would have an indeterminate, but likely positive fiscal impact to revenues retained by the clerks of the court.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Each of the 67 Florida counties has a clerk of court, an elected constitutional officer who oversees judiciary functions as the clerk of the county and circuit courts.¹ The clerk may also serve as the ex-officio clerk of the board of county commissioners, as well as the auditor, recorder, and custodian of county funds.

The State Constitution requires the clerks of court to be funded from revenue generated from charges for service, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court-related functions as well as select costs, expenses, and salaries as provided by law.³ Court-related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeal of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

Revenue Collections

The clerks of court statewide operating budgets vary each year depending on the amount of revenues generated. The 2019-2020 budget was \$446.8 million, the 2020-2021 budget was \$410.0 million, and the 2021-2022 budget is \$444.8 million.⁵

Between October 1, 2019, and September 30, 2020, the clerks, statewide:

- Assessed \$900,257,991 in fines and fees; and
- Collected \$757,597,834, for a collection rate of 84.16 percent statewide.⁶

Revenue collected from fines and fees is not solely budgeted to the clerks of court. For example, the Legislature has provided that a 5 percent surcharge for certain non-criminal traffic citations is deposited into the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication for a felony, misdemeanor, delinquent act, or criminal traffic offense.⁸

If a fee, service charge, fine, or court cost remains unpaid for 90 days, and the clerk has attempted to collect the unpaid amount through an internal process, the clerk may forward the unpaid accounts to an

¹ Art. V, s. 16, Fla. Const.

² Art. V, s. 14, Fla. Const.

³ *Id.*

⁴ S. 28.35(3)(a), F.S.

⁵ Florida Clerks of Court Corporation, *CFY2022 Approved Budget*, <https://flccoc.org/wp-content/uploads/2021/08/CFY2122-Approved-Budget-081121.pdf> (last visited Feb. 18, 2022).

⁶ Florida Court Clerks and Comptrollers, *2020 Annual Assessments and Collections Report*, https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_1_cir_2020_front_matter_cove.pdf (last visited Feb. 18, 2022).

⁷ S. 938.04, F.S. The Crimes Compensation Trust Fund was created to compensate crime victims. S. 960.21, F.S.

⁸ S. 938.03, F.S.

attorney or collection agent.⁹ Some counties have unpaid fines and fees totaling hundreds of millions of dollars from decades ago.¹⁰

Florida Clerks of Court Operations Corporation (CCOC)

In 2003, the Florida Legislature created the Florida Clerks of Court Operations Corporation (CCOC) to provide budget support to the clerks. 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. All clerks of the circuit court are 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.¹¹

No Fee Court Functions

There are certain filings for which the clerks of court may not charge a filing fee, including:

- A filing by an indigent party;¹²
- A petition for habeas corpus filed by a person detained as a mental health patient;¹³
- Filing an ex parte order for an involuntary examination;¹⁴
- A petition for an involuntary commitment;¹⁵
- Appellate filing fees for an indigent person determined to be, and involuntarily committed, as a sexually violent predator;¹⁶
- A petition for involuntary assessment and stabilization for substance abuse impairment;¹⁷
- A petition for a risk protection order;¹⁸ and
- A petition for a protective injunction against domestic violence;¹⁹ repeat, dating, or sexual violence;²⁰ or stalking.²¹

⁹ S. 28.246(6), F.S.

¹⁰ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm Beach County has \$277.5 million outstanding, and Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, South Florida Sun Sentinel (May 31, 2019, <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html>) (last visited Feb. 18, 2022).

¹¹ S. 28.35(2), F.S.

¹² Ss. 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

¹³ S. 394.459(8), F.S.

¹⁴ S. 394.463(2), F.S.

¹⁵ S. 394.467(3), F.S.

¹⁶ S. 394.917, F.S.

¹⁷ S. 397.6814, F.S.

¹⁸ S. 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.

¹⁹ S. 741.30, F.S.

²⁰ S. 784.046, F.S.

²¹ S. 784.0485, F.S.

Payment Plans

Court costs, fees, and other fines related to a court disposition are enforced by court order and collected by the clerks of court. A person may apply to the clerk of court to enter into a payment plan if that person is "indigent," which means he or she:

- Has an income equal to or below 200 percent of the federal poverty guidelines;²² or
- Is receiving:
 - Temporary Assistance for Needy Families-Cash Assistance;
 - Poverty-related veterans' benefits; or
 - Supplemental Security Income.²³

A monthly payment that does not exceed 2 percent of an indigent person's average monthly pay is presumed to correspond to the indigent person's ability to pay.²⁴

The clerk is required to charge a fee of up to \$5 per month for receipt or disbursement of all partial payments, with the exception of restitution, that are not subject to the administrative processing service charge pursuant to s. 28.246, F.S.²⁵ Moreover, some clerks require a down payment to establish a payment plan.²⁶ A one-time administrative processing charge of an amount not exceeding \$25 is assessed for setting up a payment plan, in lieu of a per month charge.²⁷ The collected monthly and payment plan fees are retained by the clerk. Additionally, county tax collectors are generally required to charge a service fee of \$6.25 when providing services pursuant to ch. 322, F.S.²⁸

Driver License Suspension in Florida

A license can be suspended for various reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Unpaid citations reported by another state.²⁹

Under certain conditions, if a person fails to enter into a payment plan with a clerk of court for unpaid obligations, the clerk of court may notify the Department of Highway Safety and Motor Vehicles (Department), which may in turn suspend the person's driver license.³⁰ Nearly 2 million of the more than 14 million driver licenses issued in Florida are suspended for unpaid fines.³¹

A person must pay a nonrefundable service fee of \$60 for the reinstatement of a driver license suspended for the nonpayment of criminal financial obligations. The service fee revenue is distributed as follows:

- *If reinstated by the Department, \$37.50 is deposited into the General Revenue Fund and \$22.50 is deposited into the Highway Safety Operating Trust Fund.*
- *If reinstated by the tax collector, \$37.50 is retained by the tax collector and \$22.50 is remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund.*

²² Currently, the federal poverty level is \$12,760 for individuals, with an additional \$4,480 for each additional family member in the individual's household. See U.S. Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2020-poverty-guidelines> (last visited Feb. 18, 2022).

²³ S. 27.52(1), F.S.

²⁴ S. 28.246(4), F.S.

²⁵ S. 28.24(26)(b), F.S.

²⁶ See, e.g., Seminole County Clerk of Courts, *Payment Plans*, <https://www.seminoleclerk.org/departments/courts/payment-plans/> (last visited Feb. 18, 2022).

²⁷ S. 28.24(26)(c), F.S.

²⁸ S. 322.135(1)(c), F.S.

²⁹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Citations or Court Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Feb. 18, 2022).

³⁰ See, e.g., ss. 318.15 and 322.245, F.S.

³¹ Monivette Cordeiro, *Nearly 2 Million Florida Drivers Have License Suspended for Unpaid Fines, Study Finds*, Orlando Sentinel (Dec. 19, 2019), <http://www.orlandosentinel.com/news/crime/os-ne-drivers-license-suspensions-report-20191219-xazyr2cdkff7xfljvqkcz6tum-story.html> (last visited Feb. 18, 2022).

- If reinstated by the clerk of the court, \$37.50 is retained by the clerk and \$22.50 is remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund.³²

Additionally, each tax collector who is authorized by the Department to provide driver license services must charge a \$6.25 service fee per customer for all services. The service fee revenue is retained by the tax collector.³³

Effect of the Bill

Revenue Collections

CS/HB 397 requires the CCOC to develop a formula to estimate the total cost associated with clerk support for circuit and county judges statewide, if the number of county or circuit judges is increased. The CCOC would make a recommendation for consideration by the legislature for additional funding using the formula. The CCOC would also be required to annually prepare a budget request for the reimbursement of costs related to involuntary commitment petitions and orders, subject to Legislative appropriation, at a rate of \$40 per petition or order. The Justice Administrative Commission (JAC) would be required to submit the request on behalf of the CCOC to the Governor for transmittal to the Legislature. The request would not be subject to changes by the JAC.

Payment Plans

The bill specifies that a monthly payment plan may not exceed 2 percent of a person's annual income divided by 12, or \$25, whichever is greater. The bill also specifies that the amount required by a clerk as down payment to initially establish a payment plan must be the lesser of 10 percent of the total amount owed, or \$100.

Determination of Indigency

The bill allows the clerk to conduct a review of property records for the county in which the applicant for indigency resides and motor vehicle title records of the state to identify any property interests of the applicant. The clerk is required to maintain results of the review in a file with the application and provide the file to the court if the applicant seeks review of the clerk's determination of indigent status.

Driver License Reinstatement

The bill directs the Department of Highway Safety and Motor Vehicles to work with the clerk, through the Florida Court Clerks & Comptrollers Association, to ensure the clerks' ability within their technology systems to reinstate driver licenses for failure to pay court obligations.

Effective Date

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 28.246, F.S., relating 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., relating to Florida Clerks of Court Operations Corporation.

Section 3: Amends s. 40.29, F.S., relating to payment of due-process costs; reimbursement for petitions and orders.

Section 4: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 5: Amends s. 322.29, F.S., relating to surrender and return of license.

Section 6: Provides an effective date of July 1, 2022.

³² S. 322.29(2), F.S.

³³ S. 322.135(1)(c), F.S.

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 provisions on November 5, 2021, and determined it would have an indeterminate fiscal impact on revenues deposited into the state General Revenue Fund.³⁴ 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 provisions on November 5, 2021, and determined it would have an indeterminate, but likely positive fiscal impact on revenues retained by the clerks of the court.³⁵ See *Fiscal Comments*.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Payment Plans

Section 28.246, F.S., is revised so that a payment plan's monthly payment is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income divided by twelve or \$25, whichever is greater. Any amount required by the clerk as down payment to initially establish a payment plan shall be either 10% of the total amount owed or \$100, whichever is less. With lack of data regarding the current status of various payments plans (i.e. amount being paid, length of the plan, original fine amount, etc.) the impact is indeterminate. When considering all of the changes to payment plans, the positive impacts will likely exceed the negative ones, resulting in a net indeterminate positive impact.³⁶

Driver License Reinstatement

The \$37.50 portion of the service fee for reinstatement is deposited into the General Revenue Fund, if reinstated by the Department, or is retained by the respective tax collector or clerk of the court performing the reinstatement. Currently, there is not an electronic interface between the Department and the clerk of the court to allow the clerk to reinstate a driver license after a driver has resolved all financial obligations.³⁷ The bill would facilitate the establishment of an electronic interface between the clerk and the Department, allowing for the clerk to perform driver license reinstatements, and retain the \$37.50 service fee that would otherwise be retained by the tax collector or be deposited into the General Revenue Fund.

³⁴ Revenue Estimating Conference, *SB 551 and HB 397*, November 5, 2021, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/page25-28.pdf, (last visited Feb. 18, 2022).

³⁵ *Id.*

³⁶ *Id.* at 27

³⁷ Department of Highway Safety and Motor Vehicles, *2022 Agency Legislative Bill Analysis – HB 397*, December 15, 2021, On file with the House Justice Appropriations Subcommittee.

In Fiscal Year 2020-2021, a total of \$18.4 M in service charge fees were collected for the reinstatement of driver licenses that had been suspended for nonpayment of criminal financial obligations. Of the total collected, \$6.3 M was deposited in the General Revenue fund, \$8.8 M was deposited in the Highway Safety Operating Trust Fund, and \$3.4 M was retained by tax collectors.³⁸ It cannot accurately be determined what the impact to revenue collections would be for the portion of driver license reinstatement fees retained by tax collectors or clerks who would now have the ability to reinstate a driver license and retain the fee, or the amount that is deposited into the General Revenue Fund.

Driver License Reinstatement Collections - Nonpayment of Criminal Financial Obligations

	322.29 GR	322.29 HSOTF	322.29 Tax Coll.	Total	\$6.25 Local (Tax Coll.)
FY 2018-2019	\$ 7,857,657	\$ 11,115,123	\$ 4,243,013	\$ 23,215,792	\$ 2,418,312
FY 2019-2020	\$ 6,666,141	\$ 10,541,004	\$ 3,572,025	\$ 20,779,170	\$ 2,164,497
FY 2020-2021	\$ 6,289,045	\$ 8,751,442	\$ 3,369,960	\$ 18,410,446	\$ 1,917,755

Driver and Vehicle Information Database Interface

The establishment of an electronic interface between the Department and clerks who do not currently have access is expected to have a minimal impact on the Department’s operational resources and resources dedicated to the Motorist Modernization Project, and can likely be accomplished within existing resources.³⁹

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 February 3, 2022, the Justice Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions modifying the distribution of foreclosure filing fee and county court civil appeal filing fee revenue collections; and

³⁸ Office of Economic and Demographic Research, *Highway Safety Licenses and Fees – Revenue Estimating Conference*, July 29, 2021.

³⁹ *Supra note 37.*

- Removed a provision requiring a traffic hearing official to impose a minimum penalty upon a person who elected to appear in challenge of a noncriminal traffic infraction, and is proven to have committed an infraction.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.