

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 552

INTRODUCER: Senator Boyd and others

SUBJECT: Clerks of the Circuit Court

DATE: November 29, 2021

REVISED: _____

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

I. Summary:

SB 552 changes laws affecting the clerks of court. It increases revenues of the clerks of court by:

- Decreasing the share of certain foreclosure filing fees transferred to the General Revenue Fund, thereby directing the fees to the clerks of court.
- Changing distribution of a county court filing fee from the General Revenue Fund to the clerks of court.
- Directing the clerks of court to ask the Legislature for increased funding related to increases in trial court judicial positions.
- Allowing the clerks to review property records to verify an application for civil indigent status.
- Requiring that a judge or traffic infraction hearing officer finding an offender guilty, at a minimum, impose the financial penalty that would have been imposed had the offender not elected to contest the infraction.
- Allowing the clerks of court to ask for Legislative funding for filings related to mental health and substance abuse that the clerks must currently file at no charge.

The bill also:

- Modifies the standard terms of a payment plan for an individual who owes money to a clerk to establish a \$25 minimum monthly payment and to limit the down payment to the lesser of 10 percent of the amount owed or \$100.
- Requires the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court on a system for reinstatement of driver licenses upon payment of court-related obligations.

The fund shifts in foreclosure and county courts are estimated to have a recurring negative fiscal impact to the state in FY 2022-23 of \$17.4 million and a corresponding positive fiscal impact of

\$17.4 million to the clerks of court. The remainder of the bill appears to have an indeterminate positive fiscal impact on the clerks of court.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*"² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."³ In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.⁴

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.⁵

Court funding is governed by article V, section 14 of the Florida Constitution. For the clerks of the circuit courts, article V, section 14(b) provides that the clerks are self-sustaining and fund

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

² See BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.").

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ See generally Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Nov. 24, 2021). See also BLACK'S LAW DICTIONARY (10th ed. 2014) ("comptroller" means, "[a]n officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.").

⁵ Section 28.35(3)(a), F.S. See also Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Nov. 24, 2021).

their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, article V, section 14(b) states:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), 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. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.⁶

County Funding Referenced in Article V, Section 14(c)

As referenced above, article V, section 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including “the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.”⁷ Additionally, counties pay “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”⁸

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.⁹
- Petitions for Habeas Corpus filed by persons detained as mental health patients.¹⁰
- Filing an ex parte order for involuntary examination (Baker Act).¹¹

⁶ FLA. CONST. art. V, s. 14(b) (emphasis added).

⁷ FLA. CONST. art. V, s. 14(c).

⁸ *Id.* Additionally, article V, section 14(a) provides that funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel will generally be paid from “state revenues appropriated by general law”; and section 14(d) clarifies that the court system has no appropriations authority.

⁹ Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

¹⁰ Section 394.459, F.S.

¹¹ Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or the Baker Act).

- Petitions for involuntary inpatient placement for mental health.¹²
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.¹³
- Petitions for involuntary assessment and stabilization for substance abuse impairment.¹⁴
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).¹⁵
- Petitions for protective injunctions against domestic violence,¹⁶ repeat, dating, or sexual violence,¹⁷ or stalking.¹⁸

History of the Clerks of Court Funding Model

1998 Article V Revision (“Revision 7”) and Implementing Legislation

Article V, section 14, was amended in 1998 to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”¹⁹ The statement of intent accompanying the revision of article V, section 14(b), also known as “Revision 7,” reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks’ office in the event “filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year”; and (2) for the disposition of excess revenues collected by the clerks’ offices in a given fiscal year.²⁰

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks’ offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks’ offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.²¹

¹² Section 394.467, F.S.

¹³ Section 394.917, F.S.

¹⁴ Section 397.6814, F.S.

¹⁵ Section 790.401, F.S.; ch. 2018-3, s. 16, Laws of Fla.

¹⁶ Section 741.30, F.S.

¹⁷ Section 784.046, F.S.

¹⁸ Section 784.0485, F.S.

¹⁹ *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

²⁰ William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.

²¹ *Id.*

Revision 7's 1998 amendment to article V had to be implemented by July 1, 2004.²² In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."²³

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted **sections 28.35, 28.36, and 28.37, F.S.**²⁴:

- **Section 28.35, F.S.**, created the Florida Clerks of Court Operations Corporation (Corporation)²⁵ which is responsible to provide accountability, procedural review, and oversight to the clerks of court budgeting process throughout the state.
- **Section 28.36, F.S.**, established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- **Section 28.37, F.S.**, ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008²⁶

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.²⁷ A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,²⁸ a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.²⁹ If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.³⁰

²² *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

²³ Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).

²⁴ 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113-A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.

²⁵ *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.

²⁶ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

²⁷ Section 142.01, F.S.

²⁸ Section 28.37(2), F.S. (2008).

²⁹ Section 28.36(3)(b), (c), F.S. (2008).

³⁰ Section 28.36(4), F.S. (2008).

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.³¹ Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.³²

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets 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; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.³³

*Clerks in the General Appropriations Act: 2009-2012*³⁴

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).³⁵ The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.³⁶

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

³¹ Section 28.36(3), F.S. (2008).

³² Section 28.37(4), F.S. (2008).

³³ Section 28.36(6), F.S. (2008).

³⁴ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

³⁵ Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).

³⁶ Section 28.37(5), F.S.

Return to Pre-2009 Funding Model: 2013-2019³⁷

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Significantly, the 2013 law³⁸ added the following:

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.³⁹
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.⁴⁰

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and either: (1) approve, (2) disapprove, or (3) amend and approve the budgets by October 1 of each year.⁴¹ In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.⁴²

Most Recent Changes -- 2019 to present

The clerk's budget process was amended again in 2019.⁴³ 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 Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- 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.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed 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

³⁷ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

³⁸ Chapter 2013-44, Laws of Fla.

³⁹ Section 28.35(2)(f), F.S.

⁴⁰ Section 28.35(2)(f)6., F.S.

⁴¹ Section 11.90(6)(d), F.S.

⁴² Chapter 2017-126, s. 1, Laws of Fla.

⁴³ Chapter 2019-58, Laws of Fla.

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.

- 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.

In that same act, the 2019 Legislature was looking ahead to 2022 by including this:

Section 32. Before the 2022 Regular Session of the Legislature, the Legislature shall review and consider the results of the analysis submitted pursuant to Specific Appropriation 2754 of the 2019-2020 General Appropriations Act regarding the review of the Clerk of Court Processes for the purpose of considering the extension or reenactment of provisions in this act relating to clerk funding.⁴⁴

Specific appropriation 2754 reads in relevant part:

From the funds in Specific Appropriation 2754, the Office of Program Policy Analysis and Government Accountability is directed to contract with an independent third party consulting firm to assist with a review of the Clerk of Court processes including collection and compilation of empirical evidence based on observation of a random sample of clerks' offices employees; comparison of clerks' office work patterns to propose efficiency and productivity standards; and assessment and comparison of organizational arrangements and deployment of personnel resources among all clerks' offices. Sample groups must include a broad number of large and small counties and include entities from all areas of the state. The analysis shall be submitted to the chair of the Senate Appropriations Committee and the chair of the House of Representatives Appropriations Committee by November 15, 2019.

The report contains 26 recommendations for operational efficiency and cost savings in five categories.⁴⁵ It is unknown how many recommendations have been implemented.

III. Effect of Proposed Changes:

SB 552 primarily increases revenues of the clerks of court, and makes fiscal-related operational changes, to wit:

Civil Case Filing Fees Retained by the Clerk

Current law requires a clerk of court to transfer to the General Revenue Fund \$700 of the foreclosure case filing fee for a foreclosure where the value of the claim is more than \$50,000 but less than \$250,000, retaining \$195 for the clerk.⁴⁶ Current law also requires the clerk of court

⁴⁴ Chapter 2019-58, s. 32, Laws of Fla.

⁴⁵ Florida Clerks of Court Study, *Final Report* (November 15, 2019), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS>

⁴⁶ Section 28.241(1)(a)2.d.(II), F.S.

to transfer to the General Revenue Fund \$930 of the foreclosure filing fee where the value of the claim is more than \$250,000, retaining \$195 for the clerk.⁴⁷ The bill increases the clerk's share of filing fees in foreclosure actions, and decreases the share paid to General Revenue, by \$350 per case where the value of the claim is more than \$50,000 but less than \$250,000, and by \$465 per case where the value of the claim is more than \$250,000.

Current law imposes a \$295 filing fee to file a cross claim, counterclaim, counterpetition, or third party complaint in the county court where the relief sought exceeds \$2,500 but is less than \$15,000.⁴⁸ The clerk of court is required to transfer the \$295 to the General Revenue Fund. The bill changes distribution of the county court fee for filing a cross-claim, counterclaim, counterpetition, or third-party complaint from the General Revenue Fund to the fine and forfeiture fund of the respective county. This will have the effect of providing additional funding to the clerk of court.

Clerk of Courts Operations Corporation

The bill adds to the list of duties required of the Clerk of Courts Operations Corporation the duty to:

- Recommend to the Legislature changes in the distribution of monies collected by a clerk.
- Recommend to the Legislature an increase in a clerk's budget representing the total increased costs associated with clerk support of a new trial court judicial position, based on a formula approved by the Corporation.
- Develop on an annual basis a budget request for the anticipated amount necessary for reimbursement of certain no-fee cases related to mental health and substance abuse (see below). The request is not subject to change by the Justice Administrative Commission, and it must be submitted to the Governor for transmittal to the Legislature.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Current law authorizes a clerk to accept partial payments and to enter into payment plans with individuals.⁴⁹ Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.⁵⁰

The bill changes the terms of payment plans offered by a clerk to a person unable to immediately pay monies owed to the clerk. The bill establishes a minimum monthly payment of \$25, and establishes a maximum initial payment of the lesser of 10 percent of the debt or \$100. The \$5 partial payment service charge⁵¹ or the alternative one-time \$25 service charge for establishing a payment plan,⁵² are payable in addition and thus not a part of the limits.

⁴⁷ Section 28.241(1)(a)2.d.(III), F.S.

⁴⁸ Section 34.041(1)(c), F.S.

⁴⁹ Section 28.246(4), F.S.,

⁵⁰ Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual at that wage would pay no more than \$26.80 a month on a clerk's payment plan.

⁵¹ Section 28.24(27)(b), F.S.

⁵² Section 28.24(27)(c), F.S.

Civil Indigent Application Investigation

An individual seeking appointment of an attorney in a civil case who is eligible for court-appointed counsel, or seeking relief from prepayment of civil filing fees, must apply to the clerk for a determination of civil indigent status. There is a presumption that an individual is not indigent if the individual has a net equity of \$2,500 or more, excluding homestead and excluding equity in a vehicle of up to \$5,000.⁵³ The clerk must accept the application on its face and may not independently verify the information provided.⁵⁴

The bill allows a clerk of court to make a limited investigation of an individual's application for status as civil indigent. The clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant. The clerk may evaluate and consider the results of the review in making a determination of civil indigent status. If a review is conducted, the results must be in the court file should the applicant appeal the denial of civil indigent status to the trial court.

Traffic Ticket Minimum Fines

While a few noncriminal traffic infractions require a court appearance, in most cases the offender may elect to waive the court appearance, plead guilty to the offense, and pay a specified financial penalty.⁵⁵ A person may elect to contest the infraction and appear at a court hearing before a judge or hearing officer, but that election requires the person to waive the right to the specified penalty.⁵⁶ If the judge or hearing officer finds the offender guilty at the hearing, the judge or hearing officer may impose a fine of any amount up to \$500 in most infractions (a few have a \$1,000 maximum). Notably, this allows a judge or hearing officer in most cases to impose a penalty less than the penalty imposed on an individual who does not contest the infraction. There are two exceptions where the judge or hearing officer must impose the specified penalty as a minimum.⁵⁷ Traffic infraction penalties are split between numerous funds. The split and the funds affected vary based on the offense, but a portion of every penalty funds the operations of the clerks of court.

Where a person elects to contest a traffic infraction, the bill provides that the minimum civil penalty upon a finding of guilt is the amount that the person would have been required to pay if the person had not contested the traffic ticket.

Driver License Suspensions

Numerous laws provide for driver license suspensions due to nonpayment of court obligations. Currently, there are separate processes for reinstatement of the driver license based on the reason for the suspension. Where the suspension is due to nonpayment of a traffic infraction, upon receipt of full payment the clerk immediately clears the suspension by notice to the Department

⁵³ Section 57.082(2)(a)2., F.S.

⁵⁴ Section 57.082(2)(d), F.S.

⁵⁵ Section 318.18, F.S.

⁵⁶ Section 318.14(5), F.S.

⁵⁷ The exceptions are passing a stopped school bus and failure to secure load.

of Highway Safety and Motor Vehicles (DHSMV).⁵⁸ Where the suspension is court-related but not traffic-related, notably suspensions for delinquency in payment of child support obligations or criminal court fees and fines⁵⁹, the process is different and longer. There, the clerk of court collects the monies owed and furnishes the person with an affidavit that the financial obligation that led to the suspension has been paid. The person must then go to a county tax collector's office to reinstate the driver license with DHSMV. Until the process is complete, the person's license remains suspended.⁶⁰

The bill requires the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court, through their association, to ensure the capability within the department's technology systems for clerks of court to reinstate suspended driver licenses that have been suspended for failure to pay court-related obligations.

Clerk Reimbursement for Certain No-Fee Cases

Clerks of court are supposed to be primarily funded by filing fees and service charges.⁶¹ However, some civil cases are processed by the clerks without payment, notably protective injunctions, mental health, substance abuse, and civil actions filed by indigents. During the 2019-20 county fiscal year, the clerks opened 183,991 civil files without payment of a filing fee to the clerk.⁶²

Subject to appropriations, the bill allows a clerk of court to submit to the Justice Administrative Commission a certified request for \$40 per case reimbursement for services rendered in certain no-fee civil cases related to mental health and substance abuse. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. The categories of cases are:

- Habeas corpus filed by an individual detained under the Florida Mental Health Act⁶³, pursuant to s. 394.459(8)(d), F.S.
- Determination whether an individual should be subject to an involuntary mental health examination under the Florida Mental Health Act, pursuant to s. 394.463(2)(a), F.S.
- Determination whether an individual should be subject to involuntary mental health placement in a mental health facility under the Florida Mental Health Act, pursuant to s. 394.467(3), F.S.
- Determination whether an individual is a sexually violent predator subject to commitment to a mental health facility for sexually violent predators, pursuant to s. 394.917(3), F.S. and Part V of ch. 394, F.S.
- Determination of whether an individual should be involuntarily assessed and stabilized due to substance abuse, pursuant to s. 397.6814, F.S.⁶⁴

⁵⁸ Section 318.15, F.S.; Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).

⁵⁹ Section 322.245, F.S.

⁶⁰ Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).

⁶¹ FLA. CONST. article V, s. 14(b).

⁶² Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021). There were 135,672 statutory no-fee cases and 48,319 cases filed by indigents.

⁶³ The Florida Mental Health Act is also known as the Baker Act.

⁶⁴ Chapter 397, F.S., is also known as the Marchman Act.

Effective Date

The bill is effective July 1, 2022.

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, s. 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:

This traffic infraction minimum fine (Section 6) will negatively impact individuals who may have otherwise convinced a judge or hearing officer to impose a penalty less than the statutory default.

C. Government Sector Impact:

The Revenue Estimating Conference estimates that the fee shifts in foreclosure (Section 1) and county courts (Section 4) will have a recurring negative fiscal impact in FY 2022-23 of \$17.4 million and a corresponding positive fiscal impact of \$17.4 million on clerks of court. The Revenue Estimating Conference estimates that the remainder of the bill has an indeterminate positive fiscal impact on the clerks of court.

In FY 2019-20, there were 59,502 mental health and substance abuse cases opened.⁶⁵ Assuming the same number of cases in future years, it would cost an estimated \$2.4 million should the Legislature elect to fully fund the clerks at \$40 a case.

In FY 2019-20, there were 1,180,927 civil traffic infraction hearings.⁶⁶ It is unknown how many were mandatory hearings vs. voluntary hearings to contest an infraction. It is unknown how many hearings resulted in a finding of guilt and the judge or hearing officer then imposed a fine less than what the offender would have paid had he or she not contested the infraction.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.241, 28.246, 28.35, 34.041, 57.082, 318.14, 322.29, 394.459, 394.463, 394.467, 394.917, and 397.6814, F.S.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁵ Florida Office of the State Courts Administrator, *Statistical Reference Guide to Florida's Trial Courts, FY 2019-20*, <https://www.flcourts.org/Publications-Statistics/Statistics/Trial-Court-Statistical-Reference-Guide>

⁶⁶ *Id.*