

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 1470

INTRODUCER: Judiciary Committee and Senator Hutson and others

SUBJECT: Clerks of the Court

DATE: February 22, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1470 increases funding of the clerks of court by:

- Allowing the clerks to retain certain civil filing fees, service charges, and clerks' excess revenues that are currently directed to the General Revenue Fund.
- Increasing the categories and amounts related to no-fee cases where the clerks may request state reimbursement.
- Creating the Miami-Dade Clerk of the Court Driver License Reinstatement Pilot Program.
- Allowing the clerks of court to submit an annual budget request for reimbursement of the anticipated amount necessary to fund increases in the employer contribution rate for the Florida Retirement System.
- Adding "improving court technology" to the list of court-related function that clerks may fund from filing fees, services charges, court costs, and fines.
- Allowing the clerk of the circuit court in each county to invest funds held in the fine and forfeiture fund in an interest-bearing account.

Providing that interest earned in the fine and forfeiture fund must be deposited into the Public Records Modernization Trust Fund to be used exclusively for additional court-related operations and enhancements.

The bill also corrects several technical fiscal references related to clerks, state attorneys, public defenders, regional counsels, and capital collateral regional counsels.

The bill redirects an estimated \$37.6 million in revenues from the General Revenue Fund to the Clerks' Fine and Forfeiture Fund and Public Records Modernization Trust Fund starting in Fiscal

Year 2024-2025. The section of the bill on clerks' excess revenue will redirect an estimated \$3.3 million in nonrecurring funds from the General Revenue Fund in Fiscal Year 2024-2025. The Miami-Dade pilot program is estimated to reduce revenues accruing to the General Revenue Fund by a total of \$1.6 million in Fiscal Years 2024-2025 and 2025-2026. The bill also allows the clerks to invest specified funds, which may increase revenue to the fine and forfeiture fund and the Public Records Modernization Trust Fund. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

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 the clerk's role as auditor and custodian of county funds, 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. Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and are to fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

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

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, *Role of the Clerk and Comptroller*, <https://www.flclerks.com/page/RoleoftheClerk> (last visited Jan. 19, 2024). 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.").

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.⁵

The court-related functions authorized by law or court rule which must be funded by the clerk's collection of filing fees, service charges, costs, and fines, include 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.⁶

Public Defender Services; Due Process Costs; Reimbursement

The state must provide an attorney to an indigent criminal defendant facing imprisonment.⁷ A criminal defendant must apply for indigent status.⁸ In practice, the applications are generally summarily approved upon filing if facially valid, but subject to later audit. The indigent status may be challenged by the state attorney at a later time. If the state attorney prevails, 25 percent of monies recovered are payable to the Grants and Donations Trust Fund within the Justice Administrative Commission ("JAC") and the remaining 75 percent is paid to the General Revenue Fund.

Some city and county ordinance violations may result in incarceration of the defendant, thus requiring appointment of an attorney if the defendant is indigent. The cost of providing a state public defender related to a city or county ordinance violation (not otherwise related to a state criminal charge) is the responsibility of the city or county, but the city or county may seek reimbursement from a defendant found guilty or who has pled no contest.⁹ If there is a recovery, the monies recovered are payable to the Grants and Donations Trust Fund within the JAC.¹⁰

Florida Retirement System

The Florida Retirement System ("FRS") operates the state employee retirement plan. Membership in the FRS is required for all full-time or part-time employees in a regularly-

⁵ FLA. CONST. art. V, s. 14(b) (emphasis added).

⁶ Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *Role of the Clerk and Comptroller*, <https://www.flclerks.com/page/RoleoftheClerk> (last visited Jan. 19, 2024).

⁷ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁸ Section 27.52(1), F.S.

⁹ Section 27.54, F.S.

¹⁰ Section 27.54(2)(c). F.S.

established position with a state agency, county government, district school board, state university, or community college, or with a participating city, independent special district, metropolitan planning organization, public charter school, or public charter technical career center. The membership requirements apply to the clerks and their employees who otherwise meet the conditions for FRS participation. Florida law requires each:

- Employee participating in the FRS to contribute 3 percent of his or her pretax salary, beginning with his or her first paycheck, regardless of which plan he or she chooses.
- Employer to contribute a percentage of the participating employee's gross monthly salary, which percentage is set by the Legislature annually based on the employee's membership class.

Although state agencies receive appropriations for required FRS employer contribution increases, the clerks do not; such increases must instead be paid by the clerks out of their portion of the collected revenue.¹¹ Consequently, the clerks assert that they are often unable to meet their required FRS employer contribution increases, and thus must occasionally resort to eliminating staff to lower their obligations.¹²

Clerk's Reimbursement for No-Fee Court Functions

In 2002, the Florida Legislature established a mechanism whereby the clerks could request reimbursement for domestic violence injunctions issued by the court, subject to a legislative appropriation.¹³ Under this law, a clerk may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for such reimbursement, which will be reimbursed at the rate of \$40 per petition if the Legislature appropriates funds for that purpose. From that \$40, the clerk must pay any law enforcement agency serving the injunction a fee of up to \$20, if the agency so requests payment.¹⁴

In 2022, the Florida Legislature established a similar mechanism whereby the clerks could request reimbursement for other types of cases for which no filing fees are authorized, including those brought under the Baker Act and the Marchman Act, at the rate of \$40 per case.¹⁵ Under this law, the Florida Clerks of Court Operations Corporation (CCOC) must annually submit the anticipated amount necessary for such reimbursements to the JAC, who must then transmit the request to the Executive Office of the Governor as part of its legislative budget request.¹⁶

III. Effect of Proposed Changes:

Court System Fiscal and Operational Changes

The bill provides that, when a state attorney recovers monies from a person who wrongfully claimed to be indigent or indigent for costs, the 25 percent split is redirected from the Grants and Donations Trust Fund within the JAC to the Grants and Donations Trust Funds of the state attorney who made the recovery. This applies to criminal and civil cases.

¹¹ Florida Court Clerks & Comptrollers, *Bill Analysis for HB 977* (2023).

¹² *Id.*

¹³ Chapter 2002-55, Laws of Fla.

¹⁴ Section 741.30, F.S.

¹⁵ Chapter 2022-201, Laws of Fla.

¹⁶ Section 40.29, F.S.

The bill provides that, when a public defender recovers monies from a person who was charged with a city or county ordinance not related to a state criminal charge who was provided public defender services (or costs if found indigent for costs), the recovery is redirected from the Grants and Donations Trust Fund within the JAC to the Grants and Donations Trust Fund of the public defender who made the recovery.

The bill corrects s. 27.703(2), F.S., to provide that conflict counsel are paid through the JAC and not the Chief Financial Officer.

The bill repeals the requirement for each state attorney and public defender to report annually to the JAC on the implementation, continuance, updating, and results of his or her affirmative action program for the previous fiscal year.

The bill removes the state attorneys, public defenders, capital collateral regional counsels, and the JAC from the definition of “agency” as applied to the chapter on state and regional planning.

The bill corrects s. 501.2101, F.S., to provide that, when a state attorney recovers monies from a person who has violated the Florida Deceptive and Unfair Trade Practices Act, the recovery is payable into the Grants and Donations Trust Fund at the JAC for that state attorney and not the Consumer Frauds Trust Fund for that state attorney. The Consumer Frauds Trust Fund within the JAC was terminated in 2004.¹⁷

Clerks of Court Fiscal Changes

Redirection of Certain Fees to the Benefit of the Clerks of Court

Any funds collected by a clerk that are not directed to a particular fund are retained by the clerk for use in operating the office of the clerk. Because a direction of monies collected is in statute and not in the state budget, a change in direction stays in effect until changed by a future Legislature. The bill redirects the following:

- \$465 per case from the filing fee for foreclosure where the outstanding mortgage balance is \$250,000 or more is redirected from the General Revenue Fund to the clerks of court.
- \$5 of the penalty for failure to timely pay a traffic infraction is redirected from the General Revenue Fund to the clerk’s Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerk.
- The \$12.50 administrative fee imposed on every noncriminal moving and nonmoving traffic violation is redirected from the General Revenue Fund, half of which is redirected to the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerk, and half into the fine and forfeiture fund to benefit the clerk.
- The \$295 fee for the filing of a cross-claim, counterclaim, counterpetition, or third-party complaint in a county court civil action where the person is seeking between \$2,500 and \$15,000 is redirected from the General Revenue Fund to the clerks of court.
- The \$10 fee for issuance of a summons in a county court civil action from the General Revenue Fund to the applicable county's Fine and Forfeiture Fund.

¹⁷ Chapter 2004-220, Laws of Fla.

The bill repeals the requirement that the Department of Revenue transfer 50 percent of the cumulative excess of the original revenue projections from the Clerk of the Court Trust Fund to General Revenue. Instead, the Florida Clerks of Court Operations Corporation must calculate the cumulative excess, which may be used in the development of the total combined budgets of the clerks of the court.

State Appropriations; Budget Requests by the Clerks

The bill allows the clerks of court to submit an annual budget request for reimbursement of the anticipated amount necessary to fund increases in the employer contribution rate for the Florida Retirement System. The JAC is directed to forward the budget request to the Executive Office of the Governor for transmittal to the Legislature.

The bill transfers responsibility for requesting state reimbursement for no-fee cases from the clerks of the court to the Clerks of Court Operations Corporation. The bill adds the following areas in which the clerks may seek state reimbursement for no-fee cases:

- The bill adds that the clerks may request state reimbursement of \$195 for each petition for a domestic violence injunction,¹⁸ injunction against repeat violence, sexual violence or dating violence,¹⁹ or injunction against stalking.²⁰ From this reimbursement, the clerk of the court receiving reimbursement must pay any law enforcement agency serving the injunction a fee of up to, but not exceeding, \$40 per injunction, if so requested by the law enforcement agency. The ability to request \$40 a case in current law is repealed.
- The bill adds that the clerks may request state reimbursement of \$195 per civil case where the plaintiff or petitioner was found indigent and was therefore entitled to file the case without a filing fee.

The changes made all merely allow the clerks to *request* state funding. Each funding request is subject to legislative appropriation and, thus, is not guaranteed to be paid to the clerks.

Clerk Budgeting and Expenditures

The bill adds “improving court technology” to the list of authorized categories of expenditures that can be made by a clerk of court.

Clerk Investment of Funds

The bill allows the clerk of the circuit court in each county to invest funds held in the fine and forfeiture fund in an interest-bearing account. The interest earned in the fund must be deposited into the Public Records Modernization Trust Fund to be exclusively used for additional court-related operations and enhancements.

¹⁸ Section 741.30, F.S.

¹⁹ Section 784.046, F.S.

²⁰ Section 784.0485, F.S.

Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program

The bill creates the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program. The program allows the Miami-Dade county clerk of courts to reinstate a driver license when the driver has satisfied all obligations and conditions for reinstatement. The program will operate between July 1, 2024, and July 1, 2026.

Currently, once all financial and court-related obligations are met, the reinstatement fee is \$60. 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. Currently in Miami-Dade County, most reinstatements are processed by the Department of Highway Safety and Motor Vehicles, although plans are in place to shift department responsibility to the local tax collector. The department estimates that this pilot program would move approximately 18 percent of reinstatements to the Miami-Dade County Clerk of Courts from the department.²¹

The bill also requires the program to issue a report regarding the program by December 31, 2025, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the executive director of the Florida Clerks of Court Operations Corporation containing:

- Number of driver license reinstatements.
- Amount of fees and costs collected, including the aggregate funds received by the clerk, local governmental entities, and state entities, including the General Revenue Fund.
- The personnel, operating, and other expenditures incurred by the clerk.
- Feedback received from the community, if any, in response to the clerk's participation in the pilot program.
- Whether the pilot program led to improved timeliness for the reinstatement of driver licenses.
- The clerk's recommendation as to whether the pilot program should be extended in Miami-Dade County or expanded to other clerks' offices.
- Any other information the clerk deems necessary.

Effective Date

This bill takes effect upon becoming a law.

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 Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

²¹ 2024 Revenue Estimating Conference, Impact Conference Reports, at pg. 149.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) met on January 12, 2024, and determined the bill will redirect approximately \$37.6 million in recurring funds from the General Revenue Fund to the Clerks' Fine and Forfeiture Trust Fund and the Public Records Modernization Trust Fund beginning in Fiscal Year 2024-2025.²² The annual general revenue reduction and amount accruing to the trust funds is expected to grow each fiscal year thereafter; the impact in Fiscal Year 2028-2029 is expected to be \$39.5 million.

The REC estimated the Fiscal Year 2024-2025 fiscal impact of the individual fee categories in the bill as follows:

- Section 28.241, F.S., relating to foreclosure: \$3,411,027.
- Section 34.041(1)(c), F.S., relating to counterclaim: \$300,000.
- Section 34.041(1)(d), F.S., relating to county summons: \$8,433,502.
- Section 318.18(8)(a), F.S., relating to late civil penalty: \$4,906,817.
- Section 318.18(8)(a), F.S., relating to \$12.50 traffic fee: \$20,505,277.

The bill's provisions in Section 8 and the request for reimbursement for increases in employer contribution rates for FRS costs, is subject to appropriation. The provisions in Section 6, allowing the clerks to keep the cumulative excess of the original revenue projection rather than transmitting it to the General Revenue Fund, will result in a \$3.3 million dollar nonrecurring reduction to the General Revenue Fund.

²² 2024 Revenue Estimating Conference, Impact Conference Reports, at pgs. 147-153.

The REC estimated that the Miami-Dade Pilot Program will result in a \$0.8 million reduction in the General Revenue Fund in Fiscal Year 2024-2025 and in Fiscal Year 2025-2026 for a total of \$1.6 million.

Sections 1, 2, 3, 9, and 14 relating to the Justice Administrative Commission is estimated to have no fiscal impact on state funds.

The bill also allows the clerk of the circuit court in each county to invest funds held in the fine and forfeiture fund in an interest bearing account. Interest earned in the fund must be deposited into the Public Records Modernization Trust Fund to be used exclusively for additional court-related operations and enhancements. This may have a positive fiscal impact on the fine and forfeiture fund and the Public Records Modernization Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 27.54, 27.703, 28.241, 28.35, 28.37, 34.041, 40.29, 57.082, 110.112, 186.003, 318.18, 501.2101, 741.30, 784.046, and 784.0485.

The bill creates section 322.76 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 20, 2024:

The committee substitute:

- Allows the clerk of the circuit court in each county to invest funds held in the fine and forfeiture fund in an interest-bearing account.
- Provides that interest earned in the fine and forfeiture fund must be deposited into the Public Records Modernization Trust Fund to be used exclusively for additional court-related operations and enhancements.

CS by Judiciary on January 29, 2024:

The delete-all amendment adds two new sections to the bill.

Section 7 of the amendment adds a redirect of the \$295 fee for the filing of a cross-claim, counterclaim, counterpetition, or third-party complaint in a county court civil action

where the person is seeking between \$2,500 and \$15,000. The redirect is from the General Revenue Fund to the applicable county's Fine and Forfeiture Fund, which fund is used by the clerks for operating expenses. The section also adds a redirect of the \$10 fee for issuance of a summons in a county court civil action from the General Revenue Fund to the applicable county's Fine and Forfeiture Fund.

Section 13 of the amendment creates the Miami-Dade County Clerk of the Court Driver License Reinstatement Pilot Program. The program allows the clerk of court to reinstate a suspended driver license upon completion of conditions and payment of sums due. The amendment also makes numerous technical and grammatical improvements without changing the effect of the provision.

B. Amendments:

None.