

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1121 Disposition of Court Fees

SPONSOR(S): Bogdanoff and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 2108

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Criminal & Civil Justice Appropriations Committee		Darity	Davis
2)	Civil Justice & Courts Policy Committee			
3)	Full Appropriations Council on General Government & Health Care			
4)	Finance & Tax Council			
5)				

SUMMARY ANALYSIS

The bill transfers, over multiple fiscal years, responsibility for court-related functions from the clerks to the state courts system. The bill expresses the intent of the Legislature to provide for the appropriation of revenues from fines, fees, service charges, and costs to the clerks of court through the appropriations act.

The bill creates a new section of the Florida Statutes, which provides that, beginning with the 2009-2010 fiscal year and every fiscal year thereafter, the Legislature must designate up to five judicial circuits in which court-related services currently imposed by law upon the clerks of the court are transferred to the state courts system.

The fiscal impact of this bill is indeterminate, though it appears it will be a significant negative impact on both state General Revenue and local government expenditures.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Revision 7 to Article V Overview

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, "[t]hese elected independent officials interact as part of a complex interdependent system."¹

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.² Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 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.

Article V, section 14(c) provides that:

Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses

¹ Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

² *Id.* at 2.

of the state courts system to meet local requirements as determined by general law.

Clerks' Court-Related Functions

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.³

The list of functions clerks may not fund from filing fees, service charges, court costs, and fines includes:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.⁴

The clerks of court are allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions are distributed to the General Revenue Fund or other trust funds.⁵ Under existing law, clerks are required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.⁶ Thereafter, the Department of Revenue will transfer the funds in the Department of Revenue Clerks of the Court Trust Fund which are not needed to resolve clerk deficits to the General Revenue Fund.

Florida Clerks of Court Operations Corporation

To ensure accountability for the revenues collected by the clerks of the court, the Legislature created the Florida Clerks of Court Operations Corporation (corporation).⁷ The corporation is considered a

³ Section 28.35(4)(a), F.S.

⁴ Section 28.35(4)(b), F.S.

⁵ *See, e.g.*, Section 28.241(1)(a), F.S. For example, current law sets the maximum filing fee of \$295 for a civil action, suit, or proceeding in circuit court. Portions of the \$295 are distributed to the General Revenue Fund, the clerks, the Department of Financial Services' Administration Trust Fund to fund the Florida Clerks of Court Operations Corporation, the state courts' Mediation and Arbitration Trust Fund, the Department of Revenue Clerks of the Court Trust Fund, the Court Education Trust Fund, and the Department of Financial Services Administrative Trust Fund to fund clerk education.

⁶ Section 28.37(2), F.S.

⁷ Section 28.35, F.S.

political subdivision of the state and is exempt from corporate income tax.⁸ All clerks of the circuit court are members of the corporation and hold their position and authority in an ex officio capacity.⁹ The corporation's functions include:

- Establishing a process for reviewing and certifying proposed court-related budgets submitted by each clerk;
- Developing and certifying a uniform system of performance measures and applicable performance standards;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards; and
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions.¹⁰

On or before August 15 of each fiscal year, each county clerk prepares a proposed budget and submits it to the corporation.¹¹ The budget must provide detailed information on the anticipated revenues available and expenditures necessary for the performance of court-related functions. The proposed budget must be balanced.¹² Current law sets the maximum budget amounts for the standard list of court-related functions that may be funded from fees, service charges, court costs, and fines.¹³ Upon review and certification of the individual clerk of court budgets by the Clerk of Courts Operations Corporation, revenues in excess of the amount needed to fund the approved clerk of court budgets are deposited in the General Revenue Fund.¹⁴

If the clerk estimates that available funds plus projected revenues will be insufficient to meet anticipated expenditures for court-related functions, the clerk must report a revenue deficit to the corporation. If the clerk has raised fees, services charges, and any other court-related clerk fees to the maximum amounts, but still reports a deficit, the corporation may notify the Department of Revenue that the clerk is authorized to retain revenues, in an amount necessary to fully fund the projected deficit.¹⁵ If a deficit still exists after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue must certify the amount of the deficit to the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.¹⁶

The Legislative Budget Commission has authority to approve increases to the maximum annual budgets approved for individual clerks if:

- The additional funding is necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.¹⁷

The corporation may submit proposed legislation to the Governor, the Senate, and the House of Representatives for approval of clerk budget request amounts exceeding the maximum amounts prescribed by existing law.¹⁸

⁸ Section 28.35(1)(c), F.S. The corporation is funded pursuant to contract with the Chief Financial Officer. Funds are provided to the Chief Financial Officer for this purpose as appropriated by general law. Section 28.35(5), F.S.

⁹ Section 28.35(1)(a), F.S.

¹⁰ Office of Program Policy Analysis & Government Accountability, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 01-21 (March 2007).

¹¹ Section 28.36(3)(a), F.S.

¹² Section 28.36(3)(b), F.S.

¹³ Section 28.36(5)(a), F.S.

¹⁴ Section 28.37(4), F.S.

¹⁵ Section 28.36(4)(a), F.S.

¹⁶ *Id.*

¹⁷ Section 28.36(6), F.S.

¹⁸ Section 28.36(7), F.S.

Court Funding

Florida courts are funded by a general appropriation by the Legislature. Article V, Section 14(a) of the Florida Constitution provides:

All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

For Fiscal Year 2008-09, the Legislature appropriated the resources shown below for the state courts system:¹⁹

FTEs	4325.50
General Revenue	\$ 388,303,223
Trust Funds	\$ 45,449,051
Total	\$ 433,752,274

During the 2009-A Special Session, the Legislature created a State Courts Revenue Trust Fund. The purpose of the fund is to support the activities of the state courts system.²⁰

Effect of Proposed Changes

The bill removes certain court-related duties from the clerks and transfers those duties to the courts and redirects some of the filing fees collected by the clerks of court directly to the state courts system, via a trust fund.

Legislative Intent

The bill expresses the intent of the Legislature that, in order to enable greater access to justice and bring appropriate efficiency to the administration of justice, a thorough review be conducted of the business processes by which the clerk of court provides court-related services. Furthermore, the bill points to the intent of the Legislature to eliminate bureaucracy and the duplication of effort by providing additional legislative and judicial oversight of the provision of court-related services during this time of limited state resources.

Transfer of Court Related Services

The bill creates a new section of the Florida Statutes, which provides that, beginning with the 2009-2010 fiscal year and every fiscal year thereafter, the Legislature must designate up to five judicial circuits in which court-related services currently imposed by law upon the clerks of the court are transferred to the state courts system.

For the purposes of the new section, the following are considered court-related services:

- Case maintenance;
- Records management;

¹⁹ FY 2008-2009 GAA (LAS/PBS Col G64)

²⁰ Chapter 2009-7, Laws of Fla.

- 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;
- Processing bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;
- Processing jurors;
- Determinations of indigent status;
- Keeping progress dockets;
- Disposal of evidence; and
- Pro se assistance.²¹

Upon completion of the transfer of court-related services from the clerks of court to the state courts system, the bill provides for the repeal of the newly created section, as well as any other provisions of ch. 28, F.S., imposing court-related services upon the clerks of court.

Redirection of Fines, Fees, and Service Charges

The bill redirects funds generated from the collection of filing fees by the clerks of court from the General Revenue Fund and the clerks to the State Courts Revenue Trust Fund.

Petitions for Dissolution of Marriage

Under the bill, \$25 of the additional \$32.50 for petitions for a dissolution of marriage is redirected from the General Revenue Fund to the State Courts Revenue Trust Fund.²²

The bill deletes the language that requires the clerk to remit the funds to the Department of Revenue prior to distribution of the funds into the designated location. If it is the intent of the Legislature to continue to require the clerks to remit the funds to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, it may wish to restore this portion of the existing language.²³

Initial Filing Fees for Circuit Civil Suits

The bill removes the provision specifying that of the first \$85 dollars of the filing fee paid for initiating a circuit civil action, \$80 must be deposited into the General Revenue Fund. The bill also removes the provision that requires one-third of any initial circuit civil filing fees in excess of \$100 to be deposited into the Department of Revenue Clerks of the Court Trust Fund.

In turn, the bill specifies that remaining portion of the initial circuit civil filing fee will be deposited into the State Courts Revenue Trust Fund. In effect, the clerks will not retain any of the filing fee collected, and the majority of the filing fee will be deposited into the State Courts Revenue Trust Fund.²⁴

Circuit Civil Reopen Fees

²¹ Section 28.35(4)(a), F.S., exclusively enumerates the court-related functions clerks may fund from filing fees, service charges, court costs, and fines. Each of the court-related functions included in the bill are named in the statute except for “keeping progress dockets,” “disposal of evidence,” and “pro se assistance.” However, keeping progress dockets, disposal of evidence, and pro se assistance may fall under the final category of court-related functions delineated in statute, which encompasses “reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.”

²² See s. 28.101(1)(d)2., F.S.

²³ Throughout the bill, references requiring the clerk to remit the moneys collected to the Department of Revenue for deposit into the appropriate fund are deleted. The Legislature may wish to consider restoring all of these references.

²⁴ Five dollars of the initial civil filing fee will continue to be deposited in the Department of Financial Services’ Administrative Trust Fund to fund the contract with the Florida Clerks of Court Operations Corporation; \$3.50 will continue to be deposited into the Court Education Trust Fund; and \$.50 will continue to be deposited into the Department of Financial Services Administrative Trust Fund to fund clerk education.

Under existing law, clerks retain all of the \$50 reopen fee collected upon the reopening of any civil action, suit, or proceeding in circuit court. Under the bill, all circuit court reopen fees will be redirected from the clerks to the State Courts Revenue Trust Fund.

Circuit Civil Filing Fees For Cross-Claims, Counterclaims, or Third-Party Complaints

The bill redirects the deposit of the \$295 filing fee collected in circuit court upon a filing for affirmative relief by cross-claim, counterclaim, or third-party complaint from the General Revenue Fund to the State Courts Revenue Trust Fund.

Circuit Civil Appellate Filing Fees

Under current law, the \$280 filing fee for filing a notice of appeal from the county court to the circuit court and the \$100 fee for filing a notice of appeal from the circuit court to the district court of appeal or to the Supreme Court is distributed as follows:

- The first \$80 is deposited into the General Revenue Fund;
- One-third of the fee in excess of \$80 is deposited in the Clerks of the Court Trust Fund; and
- The remainder is retained by the clerks.²⁵

The bill redirects the entire fee in both instances to the State Courts Revenue Trust Fund.

Initial Filing Fees for County Civil Suits

The bill removes the provision specifying that of the first \$85 dollars of the filing fee paid for initiating a county civil action, \$80 must be deposited into the General Revenue Fund.²⁶ The bill also removes the provision that requires one-third of any initial county civil filing fees in excess of the first \$95 collected to be deposited into the Department of Revenue Clerks of the Court Trust Fund. The provision authorizing the clerk of the court to retain as fee income any remainder of the county filing fees is also removed.

In turn, the bill specifies that remaining portion of the initial county civil filing fee will be deposited into the State Courts Revenue Trust Fund. In effect, the clerks will not retain any of the filing fees collected, and the majority of the filing fee will be deposited into the State Courts Revenue Trust Fund.

County Civil Filing Fees For Cross-Claims, Counterclaims, or Third-Party Complaints

The bill redirects the deposit of the \$295 filing fee collected for cases with amounts-in-controversy exceeding \$2,500 in county court upon the filing for affirmative relief by cross-claim, counterclaim, or third-party complaint from the General Revenue Fund to the State Courts Revenue Trust Fund.

County Court Reopen Fees

Under existing law, clerks retain all of the \$25 and \$50 reopen fees collected upon the reopening of any county civil action, suit, or proceeding in the county court.²⁷ Under the bill, all county court reopen fees will be redirected from the clerks to the State Courts Revenue Trust Fund.

District Court of Appeal Filing Fees

The \$295 filing fee paid to the clerk of the district court of appeal upon the filing of a notice of cross-appeal, or a notice of joinder or motion to intervene as an appellant, cross-appellant, or petitioner is redirected from deposit into the General Revenue Fund into the State Courts Revenue Trust Fund.²⁸

²⁵ Section 28.241(2), F.S.

²⁶ This provision only applies to a \$295 initial filing fee from claims of more than \$2,500. Section 34.041(1)(a)4., F.S.

²⁷ Section 34.041(2), F.S.

²⁸ See s. 35.22(3), F.S.

Under existing law, the clerk of each district court of appeal is required to deposit all fees into the General Revenue Fund, except that \$50 of each \$300 filing is deposited into the state court's Operating Trust Fund to fund court improvement projects as authorized in the General Appropriations Act.²⁹ The bill redirects – except for the \$50 designation to the state court's Operating Trust Fund – all remaining funds into the State Courts Revenue Trust Fund.

Transfer of Court-Related Tasks

Although it is clear that the purpose of the bill is to transfer court-related tasks performed by the clerks to the state courts system and to redirect certain funds from the clerks to the courts to fund these tasks, the bill does not address certain details regarding this transition, including for example:

- The extent to which, and the manner in which, existing county employees who are performing court-related functions in the clerks' offices may become state employees under the supervision of the courts system;
- Issues related to ownership and maintenance of information technology systems that currently support the court-related functions of the clerks and the collection of fines, fees, costs, and service charges by the clerks; and
- Issues related to the transfer of custodial responsibility for court-related records that currently are maintained by clerks.

Some of the issues necessary to effectuate the transfer of court-related functions from the clerks of court to the state courts system may necessitate statutory and appropriations revisions not specifically addressed in this bill.

Other Potential Implications:

Subsequent to the Revision 7 to Article V of the Florida Constitution, the Legislature engaged in a multi-year effort to implement these changes to the operation and funding of the courts, state attorneys, public defenders, and clerks required by the constitutional revision. The bill proposes significant changes to prior legislative enactments by redirecting certain court-related functions provided by the clerks to the state courts system.

B. SECTION DIRECTORY:

Section 1 provides legislative intent.

Section 2 amends s. 28.002, F.S., relating to the transfer of court-related services.

Section 3 amends s. 28.101, F.S., relating to charges for the dissolution of marriage.

Section 4 amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 5 amends s. 34.041, F.S., relating to filing fees.

Section 6 amends s. 35.22, F.S., relating to Clerk of the district court filing fees.

Section 7 provides and effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

²⁹ Section 35.22(6), F.S.

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Indeterminate, though it appears it will have a significantly negative fiscal impact on state revenues as well as county expenditures. The bill transfers, over multiple fiscal years, responsibility for court-related functions from the clerks to the courts. In addition, certain revenue from the collection of filing fees is redirected from the General Revenue Fund and the clerks to a court trust fund. Not only would this be a significantly negative impact to General Revenue, it appears to leave the clerks offices whose responsibilities have yet to be transferred with no fee revenues to support their court-related functions. Furthermore, it appears the shifting of responsibilities and anticipated job losses at the local level could incur large leave payouts, a negative impact on local governments.

In light of the reduction in clerk responsibilities and redirection of filing fee revenue contemplated under this bill, it is anticipated the clerks' budgets and staffing will be reduced. The extent to which clerk personnel will transfer to the state courts system as the court assumes duties currently performed by the clerks is not known. Both the clerks of court and the state courts system are likely to experience operational challenges and potential costs during the transition period. The exact fiscal impact of the bill has not been determined.

The Department of Revenue reports:

If any of the functions proposed to be transferred to the state courts system are currently included in the cooperative agreements³⁰ and the State wants to continue to leverage federal funding reimbursement for allowable expenditures, the Department and the state court system will need to develop a cost allocation methodology and submit for federal approval and develop and enter into a cooperative agreement. If an agreement is entered, the state court system will need to implement the approved cost allocation methodology and complete any activities required by the methodology and submit reports to the department on which federal reimbursement will be based. The department will have an increased workload to handle cost allocation methodology activities and reporting.

If it is determined that none of the functions proposed to be transferred are currently receiving federal funding through the department's agreements with the

³⁰ The Department of Revenue is required to extend participating in the federal child support reimbursement program to the central depository (the clerk of court) in each county. Current law requires the Department of Revenue and county clerks of court to enter into a standard cooperative agreement as the vehicle to pass through the federal share of allowable expenses.

clerks of court, there would be no impact on the department to implement and maintain separate agreements.³¹

The Florida Department of Law Enforcement reports:

FDLE staff currently works with the Florida Clerks of Court to obtain court information in support of the Computerized Criminal History (CCH) system and the Firearms Purchase Program. . . . There is a concern that the procedures used for obtaining CCH information and civil court dispositions within certain statutory timeframes may be delayed because of the transfer process.³²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

As this analysis was written, a petition was filed in the Florida Supreme Court by two private individuals against the Florida Legislature and other governmental entities asserting that, among other constitutional challenges related to the collection and allocation of court fees, the clerk's remittance of residual fees to the General Revenue Fund converts those funds into an unconstitutional tax.³³ The petition also asserts that subsequent legislative appropriations of these collections must be restricted to court-related purposes.

B. RULE-MAKING AUTHORITY:

The State Courts would need rule making authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

³¹ Department of Revenue, *2009 Bill Analysis Revised, SB 2108* (March 9, 2009).

³² Florida Department of Law Enforcement, *Analysis SB 2108* (March 5, 2009).

³³ *Ervin v. The Florida Legislature et al.*, Case No. 5C09-467 (Fla. 2009).