

**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 Policy and Steering Committee on Ways and Means

BILL: CS/SB 1718

INTRODUCER: Criminal and Civil Justice Appropriations Committee and Senator Crist

SUBJECT: State Courts System

DATE: April 6, 2009 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Sadberry	JA	<b>Fav/CS</b>
2.	Hendon	Kelly	WPSC	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill redirects the portion of certain public defender fees from general revenue to the Indigent Criminal Defense Trust Fund. The bill establishes a new graduated filing fee for certain civil cases and a new graduated service charge for probate cases based on the value of the case. The graduated filing fee for foreclosure actions is effective June 1, 2009. The other civil cases, including probate cases, pay the graduated filing fee or charge beginning January 1, 2010. The increased revenue from these changes is deposited into the State Courts Revenue Trust Fund for appropriations to the judicial branch. In addition, \$80 of the \$295 filing fee for circuit civil cases not required to pay the graduated filing fee is redirected from the clerks of the court to the State Courts Revenue Trust Fund. The bill results in an estimated \$240.2 million increase in deposits in the State Courts Revenue Trust Fund and an \$9.9 million increase in general revenue. Under the bill, the Chief Justice of the Supreme Court may request a loan from general revenue if revenues fall short of estimates in the State Courts Revenue Trust Fund. Clerk revenues are reduced, and the clerks' budgets must be reduced by \$45.6 million.

The bill also:

- Requires clerks to institute electronic filing;

- Mandates the recording of burial rights with the clerk of the court at a fee of \$20 per purchase document;
- Reduces the fee for filing an action in county court to remove a tenant to \$180 from \$265; and
- Reinstates a processing fee of up to \$18 that the clerk may charge to a driver who fails to attend a basic driver improvement course after electing to do so.

This bill substantially amends the following sections of the Florida Statutes: 27.562, 28.2401, 28.241, 34.041, 318.15, and 497.2765.

## **II. Present Situation:**

### **Public Defender Fees**

Section 27.562, F.S., requires that 25% of certain fees collected on behalf of the public defender be deposited into the Indigent Criminal Defense Trust Fund and 75% of such fees be deposited into general revenue.

### **State Judicial System**

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings. The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. The Legislature established the Clerk of Courts Operations Corporation to review and approve individual clerk budgets pursuant to a budget formula in s. 28.36, F.S. The current statewide budget cap for the clerks is \$551.9 million and the amount of the approved clerk budgets is \$497 million.

### **Civil Filing Fees and Service Charges**

A party instituting a civil action in circuit court must pay the clerk of court of a fee of \$295 if the case does not have more than five defendants. If the case has more than five defendants, the party must pay an additional \$2.50 for each defendant in excess of five. Under s. 28.241, F.S., of the first \$85 in filing fees collected, the clerk must remit \$80 to the Department of Revenue for deposit into the General Revenue Fund and \$5 to the department for deposit into the Administrative Trust Fund of the Department of Financial Services to support the contract with the Florida Clerk of Court Operations Corporation.

In both county civil and circuit civil cases, a party other than a person paying an initial filing fee who files a pleading in an original civil action for affirmative relief by cross-claim, counterclaim, or third-party complaint must pay a filing fee of \$295.<sup>1</sup> However, in county civil cases, the fee

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<sup>1</sup> Sections 28.241(1)(c) and 34.041(1)(c), F.S. In county civil cases, the fee only applies if the relief sought by the party exceeds \$2,500. In both instances, the clerk remits the fee to the Department of Revenue for deposit into the General Revenue Fund.

does not apply when the cross-claim, counterclaim, or third-party complaint requires transfer of the case from county to circuit court.<sup>2</sup> There has been confusion regarding whether the filing of counter petitions are subject to the \$295 filing fee. For example, in 2008, the Attorney General analyzed whether the clerk is authorized to charge the \$295 for counter petitions filed in circuit court cases.<sup>3</sup> The Attorney General concluded that, while the matter was not free from doubt, counter petitions were not expressly included in the filing fee statute and are not subject to the imposition of the filing fee, and that the clerks may wish to work with the Legislature to draft amendatory language that would address the application of this fee.<sup>4</sup>

With respect to probate matters, the clerk of court is authorized by s. 28.2401, F.S., to impose service charges for specified services. For formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings, the service charge is capped at \$280 regardless of the value of the estate.

In an action for removal of a tenant filed in county court, the filer must pay a fee not to exceed \$265, under s. 34.041(1)(a), F.S. The Legislature raised the fee to \$265 during the 2008 Regular Session.<sup>5</sup>

### **Recording of Burial Rights**

Under s. 497.2765, F.S., a person may record his or her purchase of a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the disposition of human remains with the clerk of court to ensure a permanent record.

### **Electronic Filing of Court Cases**

For the most part, clerks of court in Florida do not accept electronic filing of cases. Some clerks image case documents, such as the Miami Dade Clerk of Court where traffic citations are imaged, and use such information in the case file. But most state civil and criminal cases are maintained in physical files. Such files must be organized, copied for certain parties, stored, provided to the court during proceedings, updated and archived. Electronic filing of cases would allow civil and criminal cases to be submitted in electronic form, and the clerk of court would maintain an electronic version of the case file. Such an electronic file would be more efficiently organized, stored, and provided to the needed parties, including the judge. The clerks in Manatee County have piloted an electronic filing processes. The federal court system uses an electronic filing system in nearly all of their courts, it is called PACER (Public Access to Court Electronic Records) Service System. These states are currently using a state-wide electronic filing system: Alabama, Arizona, California, Colorado, Connecticut, Delaware, D.C., New Jersey, North Carolina, North Dakota, Ohio, Texas, and Washington.

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<sup>2</sup> Section 34.041(1)(c), F.S.

<sup>3</sup> Fla. Att'y Gen. Opinion 2008-60, 2008 WL 4978374 (Fla. A.G. 2008).

<sup>4</sup> *Id.* The Attorney General noted that a counter petition is most frequently filed as a component of a responsive pleading such as an *Answer to Petition and Counterpetition for Dissolution of Marriage* or an *Answer to Petition and Counterpetition to Determine Paternity*.

<sup>5</sup> See ch. 2008-111, Laws of Fla. (CS for SB 1790 Reg. Sess. 2008).

### **Failure to Comply with Civil Traffic Penalty**

During the 2009-A special session, the Legislature eliminated an 18-percent discount that a driver could receive on his or her civil traffic penalty by electing to attend a driver improvement school. The Legislature, however, retained the opportunity for the driver to avoid the assessment of points under the points system for evaluating convictions and suspending a driver's license by attending such a course. Under s. 318.15, F.S., drivers whose infraction occurred before the effective date of the special session legislation (February 1, 2009) and who elect to attend a driver improvement school but fail to do so are subject to imposition of a processing fee of up to \$18 by the clerk of court. The special session legislation had the effect of eliminating the processing fee for a driver whose infraction occurs after February 1, 2009, but who similarly fails to attend the school after making the election.<sup>6</sup>

### **III. Effect of Proposed Changes:**

**Section 1.** Section 27.562, F.S., is amended to redirect 75 percent of certain public defender fees from general revenue to the Indigent Criminal Defense Trust Fund.

**Section 2.** Effective January 1, 2010, subsection (1) of section 28.2401, F.S. is amended to create a graduated service charge applicable to certain probate matters. The service charge for formal administration of probate of estates having a value of \$75,000 or less remains at \$280. For estates having a value greater than \$75,000 but less than \$250,000, the service charge is \$1,000. For estates having a value greater than \$250,000, the service charge is \$2,000. The difference between the current filing fee of \$280 and the new filing fees (\$720 and \$1,720) is to be deposited into the State Courts Revenue Trust Fund.

**Section 3.** Subsection (1) of section 28.241, F.S., is amended so that \$80 from the \$295 filing fee is to be deposited in the State Courts Revenue Trust Fund. Currently that revenue is retained by the clerk of courts. The requirement that the clerk of court remit one third of circuit filing fees to the Clerk of Court Trust Fund is deleted.

For foreclosure on residential or commercial real property, a new graduated filing fee is established based on the principal due on the mortgage plus interest on any property taxes owed. If the value is \$50,000 or less, the current filing fee of \$295 is maintained. If the value is more than \$50,000 but less than \$250,000, the filing fee is \$1,000. If the value is more than \$250,000, the filing fee is \$2,000. For the \$1,000 fee, \$780 is deposited in the State Courts Revenue Trust Fund, and, for the \$2,000 fee, \$1,785 is deposited in the State Courts Revenue Trust Fund.

In both cases, the following additional fees and distributions are retained. Such fees and distributions are as follows: \$2.50 must be paid per defendants in excess of five, \$80 is deposited into the General Revenue Fund, \$5 is deposited into the Department of Financial Services Administrative Trust Fund, an additional filing fee of \$3.50 is deposited into the Court Education Trust Fund, an additional \$0.50 is deposited in the Department of Financial Services Administrative Trust Fund for clerk education, an additional fee of \$18 paid by the party seeking

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<sup>6</sup> See ch. 2009-6, Laws of Fla. (CS for SB 12-A Special Sess. 2009-A).

severance. The clerk may impose an additional filing fee of up to \$85 for garnishment, attachment, replevin, and distress.

The party initiating the foreclosure must estimate the amount of the claim. In its order for the final disposition of the case, court shall identify the actual value and the clerk shall adjust the filing fee if there is a difference the estimated amount of the claim and the actual amount.

Cross-claim, counterclaim, counter petition, or third-party complaints for a case with a graduated filing fee must pay a similar filing fee. The fee is \$295 for all cases in which the value of the pleading is \$50,000 or less. The fee is \$1,000 for such cases in which the value of the pleading is more than \$50,000 but less than \$250,000. The fee is \$2,000 in which the value of the pleading is more than \$250,000. The clerk must remit the first \$295 of these filing fees to the Department of Revenue for deposit in general revenue. The balance (\$705 for \$1,000 fees and \$1,705 for \$2,000 fees) is deposited in the State Courts Revenue Trust Fund.

The bill specifies that counter petitions are subject to the same fees that pleadings for relief by cross-claim, counterclaim, and third-party relief are currently under the statute.

**Section 4.** Effective January 1, 2010, section 28.241 is amended to expand the graduated filing fee to other civil cases. These cases include: actions with economic damages under a contract, claims of indebtedness, condominium association actions with economic damages, antitrust or trade regulations with economic damages, business transactions with economic damages, declaratory judgments on claims covered by insurance policies, intellectual property or trade secret rights with economic damages, and dissolution of marriage or simplified dissolution of marriage. The amount in controversy shall include the amount of the estimated economic damages and other damages. For dissolution of marriage, however, the amount in controversy is based on the estimated equitable distribution of assets, not including child support or alimony.

As in the case of foreclosure cases, noted above, pleadings for relief by cross-claim, counterclaim, counter petition, or third-party relief in these types of cases would also be subject to a graduated fee.

**Section 5.** Section 34.041(1), F.S., relating to county civil cases is amended to reduce the filing fee for a removal of tenant action from \$265 to \$180. In addition, the filing fee of \$295 for cross-claim, counterclaim, or third-party complaints is amended to include counter petitions.

**Section 6.** Subsection (1) of section 318.15, F.S., is amended relating to failure to comply with civil penalties related to civil traffic infractions. If a person elects, but fails to attend a driver improvement school, a processing fee of up to \$18 shall be assessed to be paid to the clerk of court.

**Section 7.** Section 497.2765, F.S., is amended regarding the purchase of burial rights. The bill requires the recording of such a purchase and allows the clerk of court to charge a fee of \$20. The fee is deposited into the Public Records Modernization Trust Fund to be used by the clerk of court.

**Section 8.** The bill requires all clerks of court to implement electronic filing processes by March 1, 2010. The Supreme Court is requested to specify the statewide data elements needed in each filing by July 1, 2009. The clerks of court must begin implementation by October 1, 2009, and the Clerks of Court Operations Corporation must report to the Legislature on implementation by March 1, 2010. For any clerk that has not fully implemented electronic filing, the report must specify the additional steps needed, and a projected completion date. The bill allows the information technology revenue provided to the counties and the clerks to support information technology systems for the judicial entities to be used to implement electronic filing.

**Section 9.** The bill provides that notwithstanding s. 28.36, F.S., relating to the review and approval of the clerk of court budgets by the Clerks of Court Operations Corporation, the statewide budget cap for all clerks of the court is set at \$451,380,312. This specified cap is for the county fiscal year 2008-09 and the Clerks of Court Operations Corporation is directed to reduce individual clerk budgets to meet the new statewide cap.

**Section 10.** The bill allows the Chief Justice of the Supreme Court to request a loan of funds from general revenue should the estimates of the amount of revenue deposited in the State Courts Revenue Trust Fund to be 98 percent of the annual projection of revenue. The request is made to the Legislative Budget Commission. Approval of any request would require the repayment of general revenue by the trust fund by June 30, 2011.

**Section 11.** The bill contains a request by the Legislature to the Supreme Court to modify judicial rules relating to the graduated filing fees established in the bill.

**Section 12.** Except for the sections 2 and 4 relating to other civil cases with a graduated filing fee that are effective January 1, 2010, the bill provides an effective date of June 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Section 2 of the bill redirects \$80 from the \$295 circuit civil filing fee from the clerk of courts to the State Courts Revenue Trust Fund. This will result in a loss of revenue for the clerk of the courts, and the bill could be considered a local mandate pursuant to Article V, section 18 of the State Constitution. However, the redirected revenue is used by the clerks solely to support the state court system and not to support county functions.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

Parties instituting certain civil actions will pay a graduated filing fee. Such fees will depend on the amount in controversy in the case. For probate cases less than \$75,000, the fee remains \$280. Cases over that amount will pay a graduated filing fee of \$1,000 or \$2,000. Other civil cases will continue to pay the current filing fee of \$295 when the amount in controversy is \$50,000 or less. When the amount is over \$50,000 but under \$250,000, the fee is \$1,000. When amount is over \$250,000, the fee is \$2,000.

Individuals will be required to record with the clerk of court a document evidencing the purchase of a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, inurnment, or other disposition of human remains. The fee for recording the document will be \$20.

Individuals who elect to attend a driver improvement school in order to avoid the assessment of points against a driver’s license but fail to attend the course will be subject to a processing fee by the clerk of up to \$18.

**B. Private Sector Impact:**

Parties instituting certain civil actions will pay increased filing fees. The private sector will pay a smaller filing fee for eviction of tenant actions. The estimated fiscal impact to the private sector under this bill is \$202 million.

**C. Government Sector Impact:**

**State Government**

The bill raises additional revenue and diverts existing revenue to the State Courts Trust Fund and general revenue. The March 27, 2009 General Revenue Impact Conference estimated the fiscal impact of the bill and with amendments adopted by the Criminal and Civil Justice Appropriations Committee, the fiscal impact is as follows:

Revenue Source	FY 2009-10 State Courts Revenue TF (millions)	FY 2009-10 General Revenue (millions)
Redirection of public defender fees from GR to trust funds		\$-1.4
Non-probate civil and graduated filing fees	\$189.8	\$14.3
Probate graduated filing fee	\$9.7	\$0.7
Redirection of \$80 of current \$295 circuit civil fee	\$40.7	\$4.2
Counter claim/petition resolution		\$4.5
Removal of tenant fee reduction from \$265 to \$180		\$-12.4
<b>Total</b>	<b>\$240.2</b>	<b>\$9.9</b>

## **Local Government**

The redirection of the circuit filing fee revenue from the clerks of court to the State Courts Trust Fund will have a negative impact of \$44.9 million on the clerks of court. The reinstatement of the processing fee for failure to attend a driver improvement school will have a positive impact of \$2.2 million in new revenue for the clerks of court.

The reduction of the statewide clerk of the court budget cap to \$451.4 million will require the clerks to reduce their budgets and expenditures. The clerks are currently budgeted at \$497 million and will have to reduce their budgets by \$45.6 million.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

### **VIII. Additional Information:**

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

#### **CS by Criminal and Civil Justice Appropriations Committee on April 1, 2009:**

- The bill redirects the portion of certain public defender fees from general revenue to the Indigent Criminal Defense Trust Fund.
- The bill creates a graduated filing fee of \$1,000 for probate cases where the value of the estate is greater than \$75,000 and less than \$250,000. A graduated filing fee of \$2,000 is assessed when the value of the estate is more than \$250,000. The increased revenues are deposited into the State Courts Revenue Trust Fund.
- The bill redirects \$80 from the portion of the circuit civil filing fee that the clerk retains to the State Courts Revenue Trust Fund.
- The bill creates a graduated filing fee for cross-claims, counterclaims, counter petitions or third-party complaints where the value in controversy is over \$50,000. For such claims where the value is over \$50,000 but less than \$250,000, the graduated filing fee is \$1,000. When the value is greater than \$250,000, the fee is \$2,000. The increased revenues are deposited into the State Courts Revenue Trust Fund.
- The bill specifies that counter petitions are subject to the same fees as cross-claims, counterclaims, or third-party complaints.
- Effective January 1, 2010, the graduated filing fee is required of other civil, non-probate cases. Specifically, these cases include: actions with economic damages under a contract, claims of indebtedness, condominium association actions with economic damages, antitrust or trade regulations with economic damages, business transactions with economic damages, declaratory judgments on claims covered by insurance policies, intellectual property or trade secret rights with



economic damages, and dissolution of marriage or simplified dissolution of marriage.

- The bill reduces the filing fee for removal of a tenant from \$265 to \$180.
- The bill requires persons who elect, but fail to attend driver improvement school, pay an \$18 assessment to the clerk of the court.
- The bill requires the recording of a purchase of a burial right with the clerk of the court. The clerk can charge a fee of \$20 and the revenue is to be deposited in the Public Records Modernization Trust Fund.
- The bill requires all clerks to implement electronic filing processes by March 1, 2010. The bill requests that the Supreme Court set statewide standards for electronic filing by July 1, 2009. Clerks must begin implementation by October 1, 2009.
- The bill sets the statewide budget cap for the clerks of court at \$451.4 million for county fiscal year 2008-09.
- The bill allows Chief Justice of the Supreme Court to request a loan from general revenue if the revenue in the State Courts Revenue Trust Fund drops below 98 percent of the revenue estimate for the year.
- The bill requests that the Supreme Court modify its rules relating to the graduated filing fee established in the bill.
- Except for sections 1 and 3, the bill takes effect June 1, 2009. Sections 2 and 4 take effect January 1, 2010.

B. Amendments:

None.