

**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 Judiciary Committee

BILL: CS/SB 2108

INTRODUCER: Judiciary Committee and Senator Pruitt

SUBJECT: State Court Funding

DATE: March 20, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	<b>Fav/CS</b>
2.	_____	_____	FT	_____
3.	_____	_____	JA	_____
4.	_____	_____	WPSC	_____
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 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. Specifically the bill facilitates the transition from the current clerk budgeting processes to the legislative appropriation of funds for court-related functions of the clerks. The bill requires the Florida Clerks of Court Operations Corporation (corporation) to develop a legislative budget request for the 2010-11 fiscal year in preparation for the transition of the clerk budget processes to legislative appropriation.

Beginning October 1, 2010, the corporation will serve as the budget entity to which the budget for the clerks shall be appropriated annually by the Legislature. The bill augments or removes certain operational procedures established in current law related to the corporation to facilitate the new budgeting process. The corporation, pursuant to a contract with the Chief Financial Officer, will establish a legislative budget request for the clerks of court in conformance with ch. 216, F.S., and will apportion the appropriated funds among the clerks of court by budget category after the Legislature provides a legislative appropriation in each year.

The bill also redirects some of the filing fees collected by the clerks of court from various funds directly into a trust fund for the state courts system. In addition, some of the fines collected by the clerks of court are redirected from the trust fund for the state courts system to the General Revenue Fund.

The bill substantially amends the following sections of the Florida Statutes: 25.241, 28.101, 28.241, 28.35, 28.36, 34.041, 35.22, 216.011, 318.14, 318.18, 318.21, and 775.083. Effective October 1, 2010, the bill repeals section 28.36, Florida Statutes. The bill also includes legislative findings and intent language that appears to be intended for codification in the Florida Statutes.

## II. Present Situation:

### 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.”<sup>1</sup>

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.<sup>2</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> *Id.* at 2.

salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

### **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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> 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

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<sup>3</sup> Section 28.35(4)(a), F.S.

<sup>4</sup> Section 28.35(4)(b), F.S.

<sup>5</sup> *See, e.g.*, s. 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.

of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.<sup>6</sup> Thereafter, the Department of Revenue will transfer the funds in the trust fund which are not needed to resolve clerk deficits to the General Revenue Fund.

### **Florida Clerks of Court Operations Corporation**

To provide accountability for the revenues collected by the clerks of the court, the Legislature created the Florida Clerks of Court Operations Corporation (corporation).<sup>7</sup> The corporation is considered a political subdivision of the state and is exempt from corporate income tax.<sup>8</sup> All clerks of the circuit court are members of the corporation and hold their position and authority in an ex officio capacity.<sup>9</sup> 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.<sup>10</sup>

On or before August 15 of each fiscal year, each county clerk prepares a proposed budget and submits it to the corporation.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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, service 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

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<sup>6</sup> Section 28.37(2), F.S.

<sup>7</sup> Section 28.35, F.S.

<sup>8</sup> 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.

<sup>9</sup> Section 28.35(1)(a), F.S.

<sup>10</sup> Office of Program Policy Analysis & Government Accountability, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21 (March 2007).

<sup>11</sup> Section 28.36(3)(a), F.S.

<sup>12</sup> Section 28.36(3)(b), F.S.

<sup>13</sup> Section 28.36(5)(a), F.S.

<sup>14</sup> Section 28.37(4), F.S.

projected deficit.<sup>15</sup> 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.<sup>16</sup>

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; or
- The additional funding is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.<sup>17</sup>

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.<sup>18</sup>

### **Chapter 216 Appropriations Process**

Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Because the state is required to have a balanced budget, funding appropriated by the Legislature is limited by estimates of available revenue during the upcoming fiscal year.<sup>19</sup>

State agencies must develop long-range program plans and budget requests that enumerate the programs and funding needs of the agency for the following fiscal year, and submit the request to the Legislature and to the Governor, as chief budget officer of the state, in the manner prescribed in the budget instructions.<sup>20</sup> Under ch. 216, F.S., the definition of “state agency” includes:

- Any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government;
- State attorneys;
- Public defenders;
- Criminal conflict and civil regional counsel;
- Capital collateral regional counsel;
- Justice Administrative Commission;
- Florida Housing Finance Corporation;
- Florida Public Service Commission; and
- The judicial branch.<sup>21</sup>

<sup>15</sup> Section 28.36(4)(a), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 28.36(6), F.S.

<sup>18</sup> Section 28.36(7), F.S.

<sup>19</sup> *See* s. 216.221, F.S.

<sup>20</sup> Section 216.023(1), F.S.

<sup>21</sup> Section 216.011(1)(qq), F.S. It is clear from this provision that the judiciary is included in the definition solely for the purpose of implementing article III, section 19(h) of the State Constitution, relating to long-range state planning. However, it is clear in s. 216.023(2), F.S., that the judiciary’s budget must be submitted to the Legislature for approval.

Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor’s Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission.<sup>22</sup>

**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:<sup>23</sup>

FTEs	4,346.5
General Revenue	\$ 404,171,191
Trust Funds	\$ 34,644,126
Total	\$ 438,815,317

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.<sup>24</sup>

**III. Effect of Proposed Changes:**

The bill provides for the appropriation of revenues from fines, fees, and costs to the clerks of court through the appropriations act by facilitating the transition from the current clerk budgeting processes prescribed in ch. 28, F.S., to the legislative appropriation of funds for court-related functions of the clerks using planning and budgeting processes consistent with those prescribed in ch. 216, F.S. The bill also redirects funds from the clerk and the General Revenue Fund to a trust fund for the state courts system. In addition, the bill redirects certain fines from deposit into the courts’ trust fund to the General Revenue Fund.

<sup>22</sup> Section 216.023(8), F.S.

<sup>23</sup> Office of Program Policy Analysis and Government Accountability, *State Courts System* (Feb. 16, 2009), available at <http://www.oppaga.state.fl.us/profiles/1072/right.asp?programnum=1072> (last visited March 15, 2009). These figures do not include funding for state attorneys, public defenders, and certain other entities with a role in the judicial system.

<sup>24</sup> Chapter 2009-7, Laws of Fla.

### **Legislative Intent Regarding Clerk Budget Transition**

The bill expresses the intent of the Legislature that, in order to enhance accountability and efficiency in state funding of court-related functions under Article V of the State Constitution, it is necessary to provide for the appropriation of revenues from fines, fees, service charges, and costs to the clerk of court through the appropriations act. To that end, the Legislature envisions facilitation of the orderly transition from the current clerk budgeting processes prescribed in ch. 28, F.S., to the legislative appropriation of funds for court-related functions of the clerks using planning and budgeting and appropriation processes consistent with those prescribed in ch. 216, F.S.

To accomplish the transition, the bill expresses the intent to allow the clerk of court to continue to operate under its current budgeting and expenditure process until October 1, 2010, while simultaneously developing the infrastructure, procedures, and accounting protocols to begin receiving appropriations under the appropriations act beginning October 1, 2010. Further the Legislature envisions the Florida Clerks of Court Operations Corporation (corporation) to develop preliminary procedures for the clerks to identify and report budget needs to the corporation in a manner consistent with the annual legislative appropriations process by August 1, 2009 (to be finalized January 1, 2010).

The transition includes submission of a consolidated legislative budget request by the clerks via the corporation by October 15, 2009, for the period between October 1, 2010, and June 30, 2011. The corporation is to develop procedures and criteria for the allocation of legislative appropriations among the clerks of court. It is the intent of the Legislature to enact the necessary statutory changes during the 2010 Regular Session to provide for fines, fees, service charges, and costs collected by the clerks of court in connection with court-related functions to be remitted to the state, starting July 1, 2010, rather than to be retained by the clerks.

In the General Appropriations Act for the 2010-11 fiscal year, the Legislature will appropriate funds for the clerks of court from October 1, 2010, to June 30, 2011. Beginning in 2010, the clerks of court will submit, through the corporation, a legislative budget request each year for a state fiscal year beginning on July 1 and ending on June 30 of each year. It is the intent of the Legislature for the clerks to continue to operate on their current fiscal calendar year (October 1 through September 30), with the Legislature appropriating funds in the appropriations act in a manner for the clerks to expend appropriations beyond the end of each state fiscal year through September 30 of the subsequent fiscal year. Clerk employees will remain county employees, and the clerks will continue to allocate costs among these employees based on each employee's performance of court-related functions and other functions.

In portions of the intent language, it appears that the Legislature contemplates that the clerks' budget will be established on a county fiscal year (October 1-September 30). However, some of the intent language appears to be inconsistent by suggesting a state fiscal year (July 1-June 30).

The Legislature expresses recognition that this transition requires the collaborative effort of the Chief Financial Officer, the corporation, and the appropriations committees of the Senate and the House of Representatives. Finally, it is the Legislature's intent for the Office of Program Policy Analysis and Government Accountability to monitor the implementation of this transition plan

and provide four brief status reports to the President of the Senate and the Speaker of the House of Representatives by September 1, 2009; December 1, 2009; March 1, 2010; and July 1, 2010.

### **Transition of Clerk Budgeting Process**

Under the bill, the Florida Clerks of Court Operations Corporation (corporation) is directed to develop a budget request for the 2010-11 fiscal year in conformance with ch. 216, F.S. (governing appropriations acts), in preparation for the transition of clerk budget processes to legislative appropriation beginning in the 2010-11 fiscal year. The bill specifies that the budget request must include a stated number of full-time employees, salaries, and benefits for those employees, as well as other budget categories delineated in ch. 216, F.S.

Beginning October 1, 2010, the powers and duties of the corporation are redefined. First, the bill specifies that the corporation is a public corporation and “body corporate and politic.” The corporation becomes the budget entity into which the budget of each clerk of court will be appropriated annually by the Legislature. Pursuant to a contract with the Chief Financial Officer, the corporation will be required to establish a legislative budget request for the clerk of court in conformance with the provisions of ch. 216, F.S. Upon the annual legislative appropriation, the corporation will be responsible for apportioning the appropriated funds among the clerks of court by budget category. To capture the clerks in the ch. 216, F.S., budgeting process, “the clerks of court in the performance of court-related functions” is added to the definition of “state agency” or “agency.”<sup>25</sup>

In order to facilitate the clerk budgeting transition, many provisions relating to the corporation are eliminated in the bill, effective October 1, 2010, including:<sup>26</sup>

- The provision requiring the corporation to recommend 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 the court in the performance of their court-related functions;
- The provision requiring the corporation to review and certify proposed budgets submitted by clerks of the court utilizing the process approved by the Chief Financial Officer, including its duty to:
  - Calculate the maximum authorized annual budget;
  - Identify those proposed budgets exceeding the maximum annual budget for the standard list of court related functions;
  - Identify those proposed budgets containing funding for items not included on the standard list of court-related functions; and
  - Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.
- The provision requiring the corporation to certify to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department

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<sup>25</sup> Currently, the definition of “state agency” or “agency” also captures state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission, among others. Section 216.011(1)(qq), F.S.

<sup>26</sup> The bill removes the provision that exempts the corporation from the procurement provisions of ch. 287, F.S.



of Revenue, by October 15 of each year, the amount of the proposed budget certified by each clerk and other information relating to the clerk's proposed budget, as well as procedures for review of the budget certifications;

- The list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines;
- The list of court-related functions clerks may not fund from filing fees, service charges, court costs, and fines; and
- The provisions regarding the funding of the corporation and authorization for the corporation to hire staff and pay other expenses from those funds.

Because the bill envisions the corporation as the budget entity for the annual appropriation, the Legislature may need to restore some form of funding provision for the corporation, as well as authorization for the corporation to hire staff and pay expenses from those funds. In addition, the Legislature may wish to consider preserving the delineation of court-related functions to maintain statutory clarity of what constitutes "court-related" functions.

Effective October 1, 2010, the bill repeals s. 28.36, F.S., which provides the clerks' current budget processes.

### **Conforming Adjustments by the Division of Statutory Revision**

The bill provides that, effective October 1, 2010, the Division of Statutory Revision (division) must make necessary conforming adjustments to ch. 216, F.S., to effectuate the intent of the Legislature to provide the clerks of court with an annual appropriation by the Legislature through the corporation. The required adjustments include adjustments to statutes providing for the presentation of a recommended budget, the adjustment of budgets, and providing authority when there is a deficit in the General Revenue Fund.

Under current law, the division is authorized to correct grammatical and typographical errors and make "additions, alterations, and omissions, not affecting the construction or meaning of the statutes or laws."<sup>27</sup> To the extent that any substantive law changes are required by the bill's provision, the changes or additions may be beyond the purview of the division.

### **Redirection of Certain Fees**

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

### ***Florida Supreme Court Filings***

The additional fee of \$100 collected from each attorney appearing pro hac vice in a case before the Florida Supreme Court is redirected to the State Courts Revenue Trust Fund from the General Revenue Fund.<sup>28</sup>

<sup>27</sup> Section 11.242(5)(h), F.S.

<sup>28</sup> See s. 25.241(3)(a), F.S.

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, the Clerk of the Supreme Court is authorized to collect a filing fee of \$295 to be deposited into the General Revenue Fund.<sup>29</sup> The bill redirects these fees to the State Courts Revenue Trust Fund.

The bill removes the provision which requires the Chief Financial Officer to deposit \$250 of each \$300 filing fee and all other fees collected in Florida Supreme Court cases into the General Revenue Fund, as well as the provision requiring the Chief Financial Officer to deposit \$50 of each filing fee into the state court's Operating Trust Fund to fund court improvement projects as authorized in the General Appropriations Act.

### ***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.<sup>30</sup>

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.<sup>31</sup>

### ***Initial Filing Fees for Circuit Civil Suits***

Under the bill, of the first \$85 of initial filing fees of \$295<sup>32</sup> in circuit civil cases, \$80 is redirected from the General Revenue Fund to the State Courts Revenue Trust Fund. Another \$15 of the filing fee is redirected to the State Courts Revenue Trust Fund from the courts' Mediation and Arbitration 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.

### ***Initial Filing Fees for County Civil Suits***

The bill provides that clerks must collect the maximum initial filing fees for county civil actions. The bill redirects the first \$80 of these filing fees collected to the State Courts Revenue Trust

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<sup>29</sup> Section 25.241(3)(b), F.S.

<sup>30</sup> See s. 28.101(1)(d)2., F.S.

<sup>31</sup> 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 to facilitate the deposit of these funds.

<sup>32</sup> The bill clarifies that the clerk must collect the maximum fee (\$295) rather than "up to \$295" for initial circuit civil filings. Similarly, the bill clarifies that the clerk must collect the maximum (\$18) from a party seeking a severance and the maximum (\$85) for all proceedings of garnishment, attachment, replevin, and distress.

Fund from the General Revenue Fund. The first \$15 of fees for claims greater than \$2,500 and from actions for removal of a tenant is redirected from the state courts' Mediation and Arbitration Trust Fund to the State Court Revenue Trust Fund. In addition, the bill further specifies that \$175 of filing fees collected for the removal of a tenant must be deposited into the State Courts Revenue Trust Fund.<sup>33</sup>

### ***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.

### ***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.<sup>34</sup>

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.<sup>35</sup> 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.

### ***Administrative Fee in Noncriminal Moving and Nonmoving Violations***

In addition to any penalties imposed in all noncriminal moving and nonmoving traffic violations, a defendant must pay an administrative fee of \$12.50.<sup>36</sup> The bill redirects this fee to the State Courts Revenue Trust Fund from the fine and forfeiture fund.<sup>37</sup>

### **Redirection of Certain Fines**

The bill redirects certain noncriminal and criminal fines from the State Courts Revenue Trust Fund to the General Revenue Fund.

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<sup>33</sup> If it is the intent of the Legislature for the clerk to remit the referenced fees to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, it may wish to insert language to this effect.

<sup>34</sup> See s. 35.22(3), F.S.

<sup>35</sup> Section 35.22(6), F.S.

<sup>36</sup> Section 318.18(18), F.S.

<sup>37</sup> The fine and forfeiture fund is established by the clerk as a separate fund for use by the clerk in performing court-related functions. Section 142.01, F.S.

***Noncriminal Traffic Infractions***

Eighteen percent of the civil penalty imposed for moving violations not requiring an appearance, are redirected from the State Courts Revenue Trust Fund to the General Revenue Fund.<sup>38</sup>

***Speeding Fines***

The bill redirects portions of fines assessed for unlawful speed from the State Courts Revenue Trust Fund to the General Revenue Fund.<sup>39</sup>

***Felony Fines***

Fines imposed for certain felonies in which adjudication is withheld are redirected from the State Courts Revenue Trust Fund to the General Revenue Fund.<sup>40</sup>

In redirecting the fine revenues identified above from the State Courts Revenue Trust Fund to the General Revenue Fund, the bill is reversing action taken by the Legislature during the 2009-A Special Session. At that time, the Legislature authorized the additional fine revenue and specifically directed it to a newly created State Courts Revenue Trust Fund.<sup>41</sup>

**Effective Date**

The bill provides that the effective date of most of the provisions of the act is July 1, 2009. The bill provides for an effective date of October 1, 2010, for further amendments to s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation, and for the repeal of s. 28.36, F.S., governing the clerks' current budget process.

**Other Potential Implications:**

As part of the implementation of Revision 7 to Article V of the State Constitution, the Legislature has authorized clerks to operate under their own unique budgeting process for the performance of court-related functions, independent of legislative appropriations. The bill proposes significant changes to prior legislative enactments by transferring the clerks' budgeting processes as described in ch. 28, F.S., to the legislative appropriation of funds for court-related functions of the clerk using the planning and budgeting processes required of state agencies as delineated in ch. 216, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

<sup>38</sup> See ss. 318.14(9) and 318.18(3)(b), F.S.

<sup>39</sup> See s. 318.21(20), F.S.

<sup>40</sup> See s. 775.083, F.S.

<sup>41</sup> See ch. 2009-6, ss. 1 and 3-5, Laws of Fla.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill redirects revenue from the collection of filing fees from the General Revenue Fund to a court trust fund. Additionally, certain criminal and noncriminal fines are redirected from the trust fund established for the state courts system to the General Revenue Fund.

The bill also redirects the \$12.50 administrative fee in noncriminal moving and nonmoving traffic violations to a court trust fund from the fine and forfeiture fund, which is used by the clerks. Based upon revenues generated by this fee, the clerks' budget may be reduced. The clerks are likely to experience operational challenges and potential costs during the transition period of the budgeting process.

The exact fiscal impact of the bill has not been determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On March 16, 2009, 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.<sup>42</sup> The petition also asserts that subsequent legislative appropriations of these collections must be restricted to court-related purposes.

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<sup>42</sup> *Ervin v. The Florida Legislature et al.*, Case No. 5C09-467 (Fla. 2009).

**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 Judiciary on March 18, 2009:**

The committee substitute:

- Removes the provision of the bill transferring court-related duties from the clerks to the courts;
- Expresses the intent of the Legislature for the appropriation of revenues from fines, fees, service charges, and costs to the clerks of court through the appropriations act;
- Provides the framework for the orderly transition from the current clerk budgeting processes prescribed in ch. 28, F.S., to the legislative appropriation of funds for court-related functions of the clerks using planning and budgeting processes consistent with those prescribed in ch. 216, F.S.;
- Designates the Florida Clerks of Court Operations Corporation (corporation) as the budget entity into which the budget of each clerk of court will be appropriated annually by the Legislature;
- Requires the corporation to develop a budget request for the 2010-11 fiscal year in conformance with ch. 216, F.S., in preparation for the transition of the clerk budget processes to legislative appropriation beginning in the 2010-11 fiscal year;
- Provides that, upon the annual legislative appropriation, the corporation will be responsible for apportioning the appropriated funds among the clerks of court by budget category;
- Includes “the clerks of court in the performance of court-related functions” in the definition of “state agency” or “agency” in ch. 216, F.S.;
- Eliminates certain statutory provisions relating to the corporation, effective October 1, 2010, to facilitate the clerk budgeting transition;
- Directs the Division of Statutory Revision to make conforming adjustments to ch. 216, F.S., to effectuate the intent of the Legislature to provide the clerks of court with an annual appropriation by the Legislature;
- Redirects the additional \$100 pro hac vice filing fee in cases before the Florida Supreme Court from the General Revenue Fund to the State Courts Revenue Trust Fund;
- Redirects the \$295 collected in Florida Supreme Court cases for the filing of a notice of cross-appeal, or a notice of joinder or motion to intervene as an appellant, cross-appellant, or petitioner, from the General Revenue Fund to the State Courts Revenue Trust Fund;
- Deletes the statutory provision that requires the Chief Financial Officer to deposit \$250 of each \$300 filing fee in Florida Supreme Court cases into the General Revenue Fund, as well as the provision requiring the Chief Financial Officer to deposit \$50 of each filing fee into the state court’s Operating Trust Fund to fund court improvement projects as authorized in the General Appropriations Act;
- Provides that of the first \$85 of initial filing fees of \$295 in circuit civil cases, \$80 is redirected from the General Revenue Fund to the State Courts Revenue Trust

Fund, and an additional \$15 is redirected to the State Courts Revenue Trust Fund from the courts' Mediation and Arbitration Trust Fund;

- Removes the provisions of the bill redirecting reopen fees collected in circuit and county cases from the clerks to the State Courts Revenue Trust Fund;
- Removes the provision of the bill redirecting certain Circuit Civil Appellate Filing fees to the State Courts Revenue Trust Fund;
- Restores the statutory provisions that require one-third of a portion of certain initial circuit and county civil filing fees collected to be deposited into the Department of Revenue Clerks of the Court Trust Fund;
- Redirects the first \$80 of initial county civil filing fees to the State Courts Revenue Trust Fund from the General Revenue Fund;
- Provides that the first \$15 of fees for claims greater than \$2,500 and from actions for removal of a tenant are redirected to the State Court Revenue Trust Fund from the state courts' Mediation and Arbitration Trust Fund;
- Provides that \$175 of filing fees collected for the removal of a tenant must be deposited into the State Courts Revenue Trust Fund;
- Redirects the \$12.50 administrative fee imposed in noncriminal moving and nonmoving traffic violations to the State Courts Revenue Trust Fund from the fine and forfeiture fund; and
- Redirects certain noncriminal and criminal fines from the State Courts Revenue Trust Fund to the General Revenue Fund.

B. Amendments:

None.