

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/CS/SB 2108

INTRODUCER: Senate Policy and Steering Committee on Ways and Means, Judiciary Committee and Senator Pruitt

SUBJECT: Clerk of Court Funding

DATE: April 8, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.	Hendon	Sadberry	JA	Withdrawn
3.	Hendon	Kelly	WPSC	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill revises the method for setting the budgets of the clerks of court. Under the bill, the court-related revenue collected by the clerk is remitted to the state to the Clerks of Court Trust Fund within the Justice Administrative Commission. The clerks' budgets will no longer be based on the projected revenue increase for each clerk and set by the Clerks of Court Operations Corporation. Instead, each clerk will propose a budget based on four core services. Under each of the core services, the clerks will propose specific services along with a proposed unit cost. The Chief Financial Officer shall assist the clerks and the corporation in developing the unit costs. The corporation and the Chief Financial Officer will recommend unit costs for each clerk and a statewide total budget for all 67 clerks based on the unit costs and projected workload. The Legislature will accept, reject, or modify the proposed unit costs and appropriate the clerks' statewide total budget each year. The corporation will then release funding quarterly to each clerk based on the previous quarter's performance of service units using the approved unit costs. The corporation is administratively housed in the Justice Administrative Commission and funding for the corporation and the clerks will be appropriated to this entity in the General Appropriations Act.

The bill makes other changes such as: allowing the Supreme Court and the Attorney General to use vendors other than West Publishing Corporation for case law information; requiring clerks to use collection agents for uncollected amounts due after 90 days; requiring the clerks to maintain office hours with the consent of the chief judge; requiring the clerks to submit expenditure data to comply with the Transparency in Government Spending requirements of SB 1796; allowing clerks to retain 10 percent of all fine revenues collected for their operations; and transferring the Clerks of Court Trust Fund from the Department of Revenue to the Justice Administrative Commission.

The bill could create a fiscal impact on the Chief Financial Officer and the Clerks of Court Operations Corporation based on new duties. The amount of any increased costs is indeterminate at this time. The work of the Chief Financial Officer and the Clerks of Court Operations Corporation however, has been funded through court filing fee revenues in the past.

The bill substantially amends the following sections of the Florida Statutes: 25.381, 28.241, 28.246, 28.35, 28.36, 28.37, 34.041, 43.16, 43.27, 142.01, and 216.011.

The bill takes effect July 1, 2009.

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.”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

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.

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 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.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

³ Section 28.35(4)(a), F.S.

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 trust fund which are not needed to resolve clerk deficits to the General Revenue Fund. The clerks may use private collection agents for collecting unpaid court fines, fees, service charges and costs.

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).⁷ The corporation is considered a 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,

⁴ Section 28.35(4)(b), F.S.

⁵ 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.

⁶ Section 28.37(2), F.S.

⁷ Section 28.35, F.S.

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. 07-21 (March 2007).

¹¹ Section 28.36(3)(a), F.S.

¹² Section 28.36(3)(b), F.S.

and fines.¹³ Upon review and certification of the individual clerk of court budgets by the Clerks of Court 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, 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 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; or
- 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

III. Effect of Proposed Changes:

Section 1 amends s. 25.381, F.S., to allow the Supreme Court and the Attorney General to use vendors other than the West Publishing Corporation for subscriptions for case law information.

Section 2 amends s. 28.241 (1) F.S., relating to the circuit civil filing fee statute to re-direct the \$5 of the filing fee for funding for the clerks' corporation and the 50 cents for clerk education from the Department of Financial Services to the Clerks of Court Trust Fund in the Justice Administrative Commission.

Section 3 amends s. 28.246, F.S., to require clerks to use collection agents for uncollected court fines, fees, service charges and costs after an amount owed is 90 days past due.

Section 4 amends s. 28.35 F.S., to house the Clerks of Court Operations Corporation in the Justice Administrative Commission for administrative purposes. A designee of the Supreme

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 is added to the membership of the corporation and requires the corporation to be subject to state procurement laws and the administrative procedures act. The bill revises the duties of the corporation to require the corporation to develop unit costs, performance measures, and performance standards in consultation with the Supreme Court and the Legislature. The bill removes unneeded language requiring the corporation to determine the maximum amounts for clerk budgets and the Chief Financial Officer (CFO) to certify the clerk budget maximums. The bill states that corporation and the clerks shall be funded from state appropriations. The bill requires clerks to forward copies of their annual financial audit to the Supreme Court.

Section 5 amends s. 28.36, F.S., relating to how clerk budgets are developed and approved. The bill requires the clerks' corporation to develop a budget request based on specific unit costs of clerk services. The budget request will be for the last quarter of the county fiscal year (July 1 – September 30) and the first 3 quarters of the next county fiscal year (October 1 – June 30) and submits it the clerks' corporation by December 1. A copy of the budget requests shall be provided to the Supreme Court.

The bill requires each clerk to submit his or her budget based on the unit costs to provide services in four core services: case processing, financial processing, jury management, and information and reporting. The corporation shall compare the proposed unit costs for a given clerk to that of a group peer clerks. The corporation shall select the peer group based on counties with similar sized population and case filings. If higher the proposed unit costs are higher than a clerk's peers, the clerk must justify increased costs. If not justified, the corporation will reduce the unit cost to the average of their peers. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. The corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1.

The bill requires the CFO to review unit costs proposed by the clerks' corporation and make recommendations to the Legislature. The bill clarifies that the CFO can conduct audits of the clerks and allows the Chief Justice to request the CFO to audit of any clerk office. The Legislature can reject or modify the proposed unit costs and appropriates the total amount of the clerk budgets in the General Appropriations Act. After the total amount of the clerk budgets is set, the clerk corporation releases funding for the clerks quarterly based on the units of service delivered from the previous quarter and the established unit costs.

Section 6 amends s. 28.37, F.S., relating to court fines, fees, service charges, and costs, to state these court-related revenues are considered state funds and are to be remitted to the stat to be deposited in the Clerks of the Court Trust Fund, within the Justice Administrative Commission. Language no longer needed under the bill is deleted. The clerk is however allowed to deposit 10 percent of all court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.

Section 7 amends s. 34.041, (1) F.S., relating to county civil filing fees, to direct revenues that currently fund the clerks' corporation to the Clerks of Court Trust Fund and to state that, except as otherwise provided, all filing fees shall be remitted to the Department of Revenue for deposit in Clerks of the Court Trust Fund within the Justice Administrative Commission.

Section 8 amends s. 43.16 (5), F.S., to add the clerks' corporation as an entity under the Justice Administrative Commission for administrative purposes.

Section 9 amends s. 43.27, F.S., relating to clerk office hours, to require the clerk to keep office hours with the consent of the chief judge of the circuit.

Section 10 amends s. 142.01, F.S., to require the clerk to remit monthly all his or her court-related revenue collected from fees, fines, costs, and service charges from his or her fine and forfeiture to the Clerks of Court Trust Fund within the Justice Administrative Commission.

Section 11 amends s. 216.011(1)(qq), F.S., to define the clerks' corporation as a state entity under the Justice Administrative Commission.

Section 12 requires the clerks to provide expenditure data to the state consistent with the Transparency in Government Spending requirements of SB 1796 or similar legislation.

Section 13 transfers the Clerks of Court Trust Fund (FLAIR number 73-2-588) from the Department of Revenue to the Justice Administrative Commission.

Section 14 declares that the act fulfills an important state interest.

Section 15 provides that the bill takes effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill redirects clerk court-related revenue from the local Fine and Forfeiture Fund to the state Clerks of Court Revenue Trust Fund within the Justice Administrative Commission. These funds are considered state funds to be used by the clerk to perform court-related duties and therefore the bill should not be considered a local mandate pursuant to Article V, section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill transfers the Clerks of Court Trust Fund from the Department of Revenue to the Justice Administrative Commission. The trust fund was last renewed by chapter 2003-243, L.O.F.

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

None.

B. Private Sector Impact:

Publishing companies other than West Publishing Company may be used by the Supreme Court and the Attorney General for case law subscriptions.

C. Government Sector Impact:

The bill could create a fiscal impact on the Chief Financial Officer and the Clerks of Court Operations Corporation based on new duties. The amount of any increased costs is indeterminate at this time. The work of the Chief Financial Officer and the Clerks of Court Operations Corporation however, has been funded through court filing fee revenues in the past.

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.¹⁹ The petition also asserts that subsequent legislative appropriations of these collections must be restricted to court-related purposes.

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 Policy and Steering Committee on Ways and Means on April 7, 2009:

The C/S:

- Allows the Supreme Court and the Attorney General to use vendors other than the West Publishing Corporation for subscriptions for case law information.
- Redirects a portion of the circuit civil filing fee and county civil filing fee to the Clerks of Court Trust Fund in the Justice Administrative Commission.
- Requires clerks to use collection agents for uncollected court fines, fees, service charges and costs after the amount owed is 90 days past due.
- Houses the Clerks of Court Operations Corporation (corporation) in the Justice Administrative Commission and adds a designee of the Supreme Court to the

¹⁹ *Ervin v. The Florida Legislature et al.*, Case No. 5C09-467 (Fla. 2009).

corporation. The bill requires the corporation to develop unit costs, performance measures, and performance standards in consultation with the Supreme Court and the Legislature. It requires the corporation to be funded in the General Appropriations Act and deletes current budgeting language in ss. 28.35 and 28.36, F.S. The bill requires the clerks to forward copies of their annual financial audit to the Supreme Court.

- Requires the clerks' corporation to develop a budget request based on specific unit costs of clerk services.
- Requires each clerk to prepare a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first 3 quarters of the next county fiscal year and to submit it the clerks' corporation by December 1.
- Requires each clerk to submit his or her budget based on the unit costs to provide services in four core services. Clerks are allowed to deposit 10 percent of all court-related fines in their Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.
- Requires the corporation to compare the proposed unit costs to that of a group peer clerks. If higher, then clerk must justify increased costs. If not justified, the corporation will reduce the unit cost to the average of their peers.
- Directs the corporation to recommend the unit costs for each clerk and a statewide budget amount for the clerks to the Legislature by December 1.
- Requires the Chief Financial Officer (FCO) to review unit costs proposed by the clerks and the corporation and make recommendations to the Legislature. The bill clarifies that the CFO can conduct audits of the clerks and allows the Chief Justice to request an audit of any clerk office.
- States that the legislature can reject or modify the proposed unit costs and the statewide total amount of the clerk budgets shall be appropriated in the General Appropriations Act.
- Requires the corporation to release funding for the clerks quarterly based on the previous quarter's units of service delivered and the established unit cost.
- Clarifies that court-related revenues are considered state funds and are to be remitted to the Clerks of the Court Trust Fund.
- Requires each clerk of court to keep office hours with the consent of the chief judge of the circuit.
- Requires the clerks to remit all their court-related revenue from his or her fine and forfeiture fund to the Clerks of Court Trust Fund within the Justice Administrative Commission.
- Requires the clerks to provide expenditure data consistent with the Transparency in Government Spending requirements of SB 1796.
- Transfers the Clerks of Court Trust Fund from the Department of Revenue to the Justice Administrative Commission.
- Declares that the act fulfills an important state interest.

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.