

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1492

SPONSOR: Finance and Taxation Committee and Senator Smith

SUBJECT: Constitutional Revision, Article V

DATE: April 10, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Favorable/CS
2.	_____	_____	AAV	_____
3.	_____	_____	JU	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill implements various increases in court fines, fees, and service charges in order to implement Revision 7 to Article V of the Florida Constitution. Revision 7 requires that the offices of the clerks of the circuit courts are to be funded by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions. A new service charge is also created for specified circuit civil judgments or court-ordered settlements exceeding \$100,000, with exceptions. Various fee and fine revenues are not only increased or created but are also redirected from the counties to the clerks of the circuit court. Certain authority in law for counties to levy additional surcharges is eliminated.

The bill creates a Clerk of the Court Operations Conference to manage any future budgetary deficits of the 67 clerks through administration of a contingency fund. The conference is composed of four clerks of the circuit court and the Chief Justice of the Florida Supreme Court or his designee. The contingency fund is to receive \$10 of an initial circuit civil filing fee of \$300, and is to be used exclusively to supplement the funding of individual clerk's offices when filing fees and services charges are insufficient to cover reasonable budgetary needs. The conference is also charged with recommending to the legislature future changes to court-related fees and charges, developing and implementing a system of performance measures for clerks of the circuit court, and recommending to the legislature a plan for the development and implementation of an integrated statewide case information system. The Florida Association of Court Clerks and Comptrollers is required to establish and maintain a depository for funds to be used by the conference.

Sixty-five dollars of the initial \$300 circuit civil filing fee is to be deposited in the state's General Revenue Fund. Also, any surplus from all court-related fee and charges collected by the

clerks over that needed for their annual budgeted court-related expenditures is to be remitted to the state's General Revenue Fund each January 1.

In order to fund other state funding requirements of Revision 7, the bill also redirects certain revenue sharing distributions from the counties and municipalities to the state. The bill reduces the percentage of sales and use tax revenues that goes to local governments, thus increasing sales and use tax revenues for deposit into the General Revenue Fund. The Local Government Half-cent Sales Tax distribution is reduced from 9.653 percent to 8.7156 percent. The distribution to the Revenue Sharing Trust Fund for Counties is reduced from 2.25 percent to 2.058 percent and the distribution to the Revenue Sharing Trust Fund for Municipalities is reduced from 1.0715 percent to .98029 percent.

The bill provides new allocations for funds collected pursuant to ss. 938.05(1) and 938.29, F.S. The new allocation is as follows: 40 percent to the General Revenue Fund; 20 percent to a trust fund for the benefit of the state attorney; 20 percent to the Indigent Criminal Defense Trust Fund; and 20 percent to the Court Education Fund.

The bill renumbers s. 43.195, F.S., as s. 28.24, F.S., and amends that section authorizing a clerk of the court to dispose of items of physical evidence which has been held as exhibits in excess of 3 years in cases where no collateral attack is pending.

This bill substantially amends the following sections of the Florida Statutes: 28.101, 28.24, 28.241, 28.2401, 34.032, 34.041, 34.191, 44.108, 55.505, 55.10, 61.14, 142.01, 142.02, 142.03, 142.15, 142.16, 145.022, 212.20, 218.35, 318.15, 318.18, 318.21, 322.245, 327.73, 382.023, 713.24, 744.3135, 744.365, 744.3678, 938.35, 26.012, 34.01, 48.20, 316.635, 373.603, 381.0012, 450.121, 560.306, 633.14, 648.44, 817.482, 828.122, 832.05, 876.42, 893.12, 901.01, 901.02, 901.07, 901.08, 901.09, 901.11, 901.12, 901.25, 902.15, 902.17, 902.20, 902.21, 903.03, 903.32, 903.34, 914.22, 933.01, 933.06, 933.07, 933.10, 933.101, 933.13, 933.14, 939.02, 939.14, 941.13, 941.15, 941.17, 941.18, 941.141, 948.06, 985.05, 56.071, 56.29, 61.1826, 64.061, 65.061, 70.51, 92.142, 112.41, 112.43, 112.47, 162.03, 162.06, 162.09, 173.09, 173.10, 173.11, 173.12, 194.013, 194.034, 194.035, 206.16, 207.016, 320.411, 393.11, 394.467, 397.311, 447.207, 447.403, 447.405, 447.407, 447.409, 475.011, 489.127, 489.531, 496.420, 501.207, 501.618, 559.936, 582.23, 631.182, 631.311, 633.052, 744.369, 837.011, 838.014, 839.1441, 916.107, 938.30, and 945.43. The bill creates the following sections of the Florida Statute: 28.2402, 28.246, 28.35, 28.36, 28.37, 55.312, 921.26, and 938.02. The bill repeals the following sections of the Florida Statutes: 142.04, 142.05, 142.06, 142.07, 142.08, 142.09, 142.10, 142.11, 142.12, 142.13, and 939.18.

## **II. Present Situation:**

Article XI, section 2 of the State Constitution provides for the creation of a thirty-seven member constitution revision commission (CRC) for the purpose of reviewing Florida's Constitution and proposing changes for voter consideration. The last revision commission was appointed in 1997. When the work of the CRC was completed in May 1998, it had adopted nine proposed revisions to the State Constitution to be placed on the November ballot for consideration by the voters.

## **REVISION 7**

Revision 7, proposed by the CRC, was adopted by the voters at the 1998 November election. The revision made several changes to Article V of the State Constitution, including extensive changes to Article V, section 14 related to funding. These changes revised the method by which the judicial system is funded by specifying the costs to be paid by the state, the counties, or by other sources. The actual text in pertinent part reads:

SECTION 14. Funding.—

(a) 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.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c) shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, 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.

(d) The judiciary shall have no power to fix appropriations.

Revision 7 also included an implementation schedule for the funding provisions in Article XII, section 22 which read:

SECTION 22. Schedule to Article V Amendment.--

(a) Commencing with fiscal year 2000-2001, the Legislature shall appropriate funds to pay for the salaries, costs, and expenses set forth in the amendment to Section 14 of Article V pursuant to a phase-in schedule established by general law.

(b) Unless otherwise provided herein, the amendment to Section 14 shall be fully effectuated by July 1, 2004.

To begin the implementation of Revision 7, the 2000 Legislature passed CS/SB 1212 (Chapter 2000-237, Laws of Florida). The law created Chapter 29, Florida Statutes, and provided the framework for identifying and defining the components of the state court system, the public defenders' offices, the state attorneys' offices, court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes.

### **THE CLERKS OF THE CIRCUIT AND COUNTY COURTS**

Clerks of the circuit courts are elected constitutional officials. *See* Art. VIII, s. 1, Fla. Const. (2002). Although the Florida Constitution provides for the establishment of the clerks of the courts in each county, the duties of the clerks are set forth by special or general law. *See* Art V, s. 16, Fla. Const. The duties of the clerk may be divided as if between two officers, one serving as the clerk and the other serving as the county financial officer (i.e., clerk for the board of county commissioners, auditor, recorder and custodian of all county funds).

Although the duties of the clerk of the circuit court are set out through numerous statutory chapters to include issuances of marriage licenses, recordings of plats, and collection or administration of fines and court charges imposed for a variety of criminal and non-criminal violations, their primary duties are set forth in Chapter 28, F.S. The clerk of the court is the official recorder of all instruments. *See* s. 28.222, F.S.; Art. VIII, s. 1, Fla. Const. (2002).

Prior to the implementation of Revision 7 to Article V, clerks are funded for their court-related programs and services from two sources: (1) monies collected and retained from the users of the courts and (2) from the Board of County Commissioners. According to the Florida Association of Court Clerks and Comptrollers (FACC), the clerks' offices are funded either as "fee clerks" or "budget clerks". The fee clerks are funded primarily or solely by service charges, fees, and court costs as well as specific appropriations from the county government. The budget clerks submit an annual budget to the county and are wholly funded in the same manner as any other department of the county government. The clerks collect numerous fees, service charges, and court costs related to the functions of the judicial system. These funds are distributed in accordance with the statute, court rule, local court rule, or ordinance which authorized the charge. Fee clerks retain those amounts authorized to cover their operating costs and budget clerks deposit all the funds collected into county accounts. Since the majority of these fees and service charges have not been revised since 1987 (with some not being revised since 1974), the clerks' court-related collections (revenues) are not sufficient to cover their court-related costs. Therefore, the Board of County Commissioners funds the fee clerk's court-related deficit. This funding is provided through an interagency fund transfer, usually on a monthly basis.

According to a study conducted by the Florida Association of Court Clerks published in May 2002, the sixty-seven clerks collected an estimated \$580.5 million in court-related fines, fees and

charges during the county fiscal year October 1, 1999 through September 30, 2000. Of these collections, and pursuant to law, \$146.7 million was distributed to various state entities, \$67.4 million was distributed to municipal entities, \$247.9 million was distributed to counties, and \$118.5 million was either retained by the fee clerks to fund the court-related operations of their offices or remitted to the counties by the budget clerks to be used for funding the clerk's office. In contrast, the FACC survey found that the cost of the clerks' court-related operations for that same fiscal period was an estimated \$354.2 million. Since the \$118.5 million retained by the clerks did not cover the \$354.2 million in operational costs, the balance of funds required to operate the clerk's offices, \$264.4 million, was funded by the counties.

Section 27.3455(3), F.S., provides for the allocation of funds collected pursuant to s. 938.05(1), F.S., and deposited into the Local Government Criminal Justice Trust Fund. Such funds consist of \$200 for felonies; \$50 for misdemeanors; and \$50 for criminal traffic offenses. The fund shall be used primarily to reimburse the county for actual expenditures incurred from services provided by the state attorney and public defender's offices.

Section 27.562, F.S., provides for the disposition of funds collected pursuant to s. 938.29, F.S., to the board of county commissioners of the county in which the judgment was entered. Section 938.29, F.S., requires the trial court to order the defendant, upon entering a judgment of conviction of a criminal act, to pay the costs assessed by the court in full, as well as fees and costs of the public defender.

Chapter 28, Florida Statutes, outlines the statutory responsibilities of the Clerks of the Circuit Courts. Section 28.101(2), F.S., authorizes the clerk to collect a \$7 service charge upon receipt of a final judgment of dissolution of marriage for the recording and reporting of such final judgment.

Section 28.24, F.S., authorizes the clerks to assess a variety of charges for services rendered by the clerk's office in recording documents and instruments and in performing the duties of the office. However, in counties where the clerk's office operates as a fiscal unit of the county, the clerk is prohibited from charging the county for such services.

Section 28.241, F.S., authorizes the clerk to assess a \$40 service charge for filing a civil action in circuit court. In addition to the \$40 service charge, the clerks are authorized to charge service charges ranging from \$2 to \$50, with a cap of \$210 for all service charges. The service charge for instituting an appellate proceeding is \$75. Counties may assess service charges in excess of those specified in this section by ordinance or by special or local law.

Section 28.2401, F.S., imposes service charges for probate matters, ranging from \$15 to \$75. Counties may assess service charges in excess of those specified in this section by ordinance or by special or local law

Section 34.032, F.S., authorizes the clerk of the circuit court to appoint a deputy clerk or clerks of the county court, including a deputy county court clerk appointed for the sole purpose of issuing arrest warrants for county or municipal ordinance violations.

Section 34.041(1), F.S., imposes service charges for instituting various civil actions or proceedings in county court, ranging from \$10 to \$40, with a cap of \$200. In addition to the service charges imposed in subsection (1), the sum of \$7 per case shall be paid by the plaintiff when filing an action for the purpose of funding the courts. Such funds shall be remitted to the Department of Revenue for deposit in the state General Revenue Fund. Counties may assess service charges in excess of those specified in this section by ordinance or by special or local law.

Section 34.191, F.S., provides that all fines and forfeitures arising from offenses tried in the county court shall be collected and accounted for by the clerk of the court and deposited in a special trust account. The board of county commissioners may assign the collection of fines, court costs, and other costs imposed by the court to a private attorney or collection agency.

Section 43.195, F.S., provides for the disposal by the clerk of the court of physical evidence which has been held as exhibits in excess of 3 years in cases on which no appeal is pending.

In order to fund mediation and arbitration services, s. 44.108, F.S., authorizes a county to levy, in addition to other service charges, a service charge of no more than \$5 on any circuit court or county court proceeding and a service charge of no more than \$45 on any petition for a modification of a final judgment of dissolution.

Section 55.505(3), F.S., imposes a \$25 service charge for recording a foreign judgment.

Section 55.10(5), F.S., authorizes the clerk to impose a fee of \$10 for services performed for a lien on real property as a result of a judgment or court order and if the transaction involves the transfer of multiple liens, an additional fee of \$5 for each additional lien shall be charged.

Section 61.14, F.S., imposes certain court related fees for delinquency of child support and alimony payments.

Section 142.01, F.S., establishes in every county of Florida, a separate fund to be known as the fine and forfeiture fund. Counties are authorized to receive funds to pay the cost of criminal prosecutions and to transfer excess funds to the county general fund.

Section 142.02, F.S., authorizes the board of county commissioners of every county to levy a special tax, not to exceed 2 mills, upon the real and personal property of the respective counties, to be assessed and collected as other county taxes, for costs of criminal prosecution.

Section 142.03, F.S., provides for the disposition of certain penal fines and the proceeds of all forfeited bail bonds and civil penalties to be paid into the fine and forfeiture fund of the county in which the indictment was found or the prosecution commenced, and judgment entered.

Section 142.04, F.S., authorizes the clerk of the circuit court to issue a certificate under the seal of the court, to each witness appearing on the part of the state, stating the amount of the compensation against the county to be paid out of the fine and forfeiture fund.

Section 142.052, F.S., provides that the clerk of the court issuing the certificate to each witness shall not be entitled to receive any fee for performing such duty.

Section 142.06, F.S., authorizing the county commission to reject any witness certification or any portion thereof that they may deem illegal and pay into the fine and forfeiture fund the amount rejected out of any fees or costs going to the clerk issuing the certificate.

Section 142.07, F.S., requires the clerk of the court to make out payrolls when the witness on behalf of the state appears in any case in county courts.

Section 142.08, F.S., provides that if any portion of the certificate is rejected by the county commissioners, the clerk of the court where the witness appeared shall be held responsible and if payment is not made immediately, the county commissioners shall deduct the amount rejected from any fees going to the clerk of the court.

Section 142.09, F.S., provides that fees of witnesses and officers arising from criminal cases shall be paid by the county under certain circumstances.

Section 142.10, F.S., provides that the officer making out an account against the county shall state the services for which the fee is charged, the title of the case in which the services were performed, and the facts which make the fees a good claim against a county.

Section 142.11, F.S., provides that the county commissioners may reject all or any portion of any account which is not a valid claim against the county.

Section 142.12, F.S., authorizes the county commissioners to audit all bills and accounts and order a warrant, for the amount that they may find to be due, payable out of the fine and forfeiture fund.

Section 142.12, F.S., provides that whenever an officer presents a bill or account against any county and any part is rejected by the county commissioners, the officer may test the validity of the charge, bill or account, and may recover a judgment for the amount

Section 142.15, F.S., provides that where a prisoner is confined in the jail of a different county from the one in which the crime was committed, the sheriff's bill for feeding such prisoner shall be paid by the board of county commissioners of the county in which the crime is alleged to have been committed. If the sheriff should subsequently collect any fees for feeding such prisoner, the fees shall be paid to the county depository, to go into the fine and forfeiture fund.

Section 142.16, F.S., provides that in case of a change of venue in any case, all fines and forfeitures shall go to the county in which the indictment was found and all the fees of all officers and witnesses shall be a charge upon the county in which the indictment was found.

Section 145.022, F.S., authorizes counties, by resolution, to appropriate a salary to a county official, other than a property appraiser, in an amount specified in chapter 145, if all fees collected by such official is turned over to the board of county commissioners.

Chapter 2000-173, L.O.F., repealed the sharing of intangibles tax revenues with counties and provided for a distribution from sales and use tax to the Revenue Sharing Trust Fund for counties. Chapter 2000-355, L.O.F., restructured the Revenue Sharing Trust Fund for Municipalities and repealed the Municipal Financial Assistance Trust Fund, transferring the portion of the cigarette tax that previously funded these to the General Revenue Fund, and providing a distribution from sales and use tax to the Revenue Sharing Trust Fund for Municipalities.

Section 212.20, F.S., provides for the disposition of sales and use tax revenues collected pursuant to chapter 212, F.S. Paragraph (d) of subsection (6) distributes collections as follows:

- 0.2 % of total collections to the Solid Waste Management Trust Fund
- 9.653 % of collections remaining to the Local Government Half-cent Sales Tax Clearing Trust Fund
- 0.065 % of collections remaining to qualified counties in the Emergency Distribution
- 2.25 % of collections remaining to the County Revenue Sharing Trust Fund
- 1.0715 % of collections remaining to the Municipal Revenue Sharing Trust Fund
- \$29,915,500 is distributed to counties in even shares (formerly from Pari-mutuel taxes)
- \$166,667 distributed monthly to each applicant who qualifies as Professional Sports Franchise
- \$166,667 distributed monthly for up to 300 months, to the Professional Golf Hall of Fame facility
- \$83,333 distributed monthly for up to 180 months, to the International Game Fish Association World Center

Estimated sales and use tax revenues going to local governments for fiscal year 2004-05 are:

- Local Government Half-cent Sales Tax - \$1,553.2 million
- County Revenue Sharing - \$357.0 million
- Municipal Revenue Sharing - \$170.0 million
- County Share (Pari-mutuel) - \$29.9 million

Section 218.35, F.S., requires each county officer to establish an annual budget for his or her office. The clerk of the circuit court, functioning in his or her capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, must prepare his or her budget in two parts:

- The budget relating to the state courts system, which shall be filed with the State Courts Administrator as well as the board of county commissioners; and
- The budget relating to the requirements of the clerk as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.

The budget of a county fee officer shall be filed with the clerk of the county governing authority.

Section 318.15, F.S., imposes fees ranging from \$10 to \$25 on persons failing to comply with civil penalties, failing to attend driver improvement school, or failing to appear at a hearing.



Section 318.18, F.S., authorizes the clerk of the court to impose, under certain circumstances, a \$5 dismissal fee for non-criminal dispositions. In addition, court costs imposed under subsection (8), dealing with persons who fail to comply with the court's requirements or who fail to pay the civil penalties specified under this section, shall pay court costs not to exceed \$30.

Section 318.21, F.S., provides for the disposition of all civil penalties received by a county court pursuant to the provisions of chapter 318, F.S. The clerk of the court receives five-tenths of a percent of all civil penalties, after disposition of \$2 to the Department of Revenue, \$1 for deposit into the Child Welfare Training Trust Fund and \$1 for deposit into the Juvenile Justice Training Trust Fund.

Section 322.245, F.S., imposes a delinquency fee of \$10 for persons who are charged with specific criminal offenses and fail to comply with the directives of the court.

Section 327.73, F.S., imposes court costs of \$12 on anyone who fails to comply with the court's requirements or fails to pay specified civil penalties.

Section 382.023, F.S., authorizes the clerks of the circuit courts to collect a fee of \$7 for the filing of a final judgment of dissolution of marriage, of which \$3 is to be retained by the circuit court and \$4 shall be remitted to the state.

Section 713.24, F.S., authorizes the clerk of the court to impose a fee for providing services in the transferring of liens. The fee shall be \$10 or if the transaction involves the transfer of multiple liens, an additional charge of \$5 for each additional lien shall be charged.

Section 744.3135, F.S., authorizes the clerk of the court to impose a \$5 fee for processing guardian files.

Section 744.365, F.S., authorizes the clerk of the court to impose a \$50 fee for an inventory filed by a guardian. If the fee is waived for a ward of the court, the audit fee must be paid from the general fund of the county in which the guardianship processing is conducted.

Section 744.3678, F.S., authorizes the clerk of the court to impose fees, ranging from \$10 to \$150, paid by the guardian for filing an annual financial return.

Section 938.05, F.S., provides that the following costs associated with a criminal case be deposited into the Local Government Criminal Justice Trust Fund: \$200 for felonies; \$50 for misdemeanors; and \$50 for criminal traffic offenses.

Section 938.18, F.S., provides that when a person pleads guilty or nolo contendere to, or is found guilty of, any felony, misdemeanor, or criminal traffic offense, the court may assess an additional court cost, not to exceed \$150.

Section 938.35, F.S., allows a county to collect fines, court costs, and other charges through a private attorney or collection agent.

The following sections of law provide for the administration of the courts: 26.012, 34.01, 48.20, 316.635, 373.603, 381.0012, 450.121, 560.306, 633.14, 648.44, 817.482, 828.122, 832.05, 876.42, 893.12, 901.01, 901.02, 901.07, 901.08, 901.09, 901.11, 901.12, 901.25, 902.15, 902.17, 902.20, 902.21, 903.03, 903.32, 903.34, 914.22, 933.01, 933.06, 933.07, 933.10, 933.101, 933.13, 933.14, 939.02, 939.14, 941.13, 941.15, 941.17, 941.18, 941.141, 948.06, 985.05, 56.071, 56.29, 61.1826, 64.061, 65.061, 70.51, 92.142, 112.41, 112.43, 112.47, 162.03, 162.06, 162.09, 173.09, 173.10, 173.11, 173.12, 194.013, 194.034, 194.035, 206.16, 207.016, 320.411, 393.11, 394.467, 397.311, 447.207, 447.403, 447.405, 447.407, 447.409, 475.011, 489.127, 489.531, 496.420, 501.207, 501.618, 559.936, 582.23, 631.182, 631.311, 633.052, 744.369, 837.011, 838.014, 839.1441, 916.107, 938.30, and 945.43. These sections refer to judges as “magistrates”, “masters” and “general or special masters”.

### III. Effect of Proposed Changes:

**Section 1:** Effective July 1, 2004, amends s. 27.3455, F.S., providing for a new allocation for funds collected pursuant to s. 938.05(1), F.S. The allocation is as follows:

- Forty percent to the General Revenue Fund
- Twenty percent to a trust fund for the benefit of the state attorney
- Twenty percent to the Indigent Criminal Defense Trust Fund
- Twenty percent to the Court Education Fund

**Section 2.** Effective July 1, 2004, amends s. 27.562, F.S., providing for a new allocation for funds collected pursuant to s. 938.29, F.S. The allocation is as follows:

- Forty percent to the General Revenue Fund
- Twenty percent to a trust fund for the benefit of the state attorney
- Twenty percent to the Indigent Criminal Defense Trust Fund
- Twenty percent to the Court Education Fund

**Section 3.** Amends s. 28.101, F.S.; to increase the service charge from \$7 to \$10.50 paid to the clerk of the court for dissolution of a marriage.

**Section 4.** Renumbers s. 43.195, F.S., as s. 28.24, F.S., and amends that section authorizing a clerk of the court to dispose of items of physical evidence which has been held as exhibits in excess of 3 years in cases where no collateral attack is pending.

**Section 5:** Amends s. 28.24, F.S.; to remove the prohibition against the clerk of the court charging the county for recording documents and instruments. The bill increases the various service charges assessed by the clerk of the court for recording documents and instruments as well as for performing other duties such as copying certain documents.

**Section 6:** Amends s. 28.241, F.S.; increases the service charge for filing a civil action in circuit court to \$300 to be paid to the clerk of the court. The bill directs \$65 of the service charge to be remitted to the Department of Revenue for deposit in the state General Revenue Fund, continues the current portion of \$2.50 to the Court Education Trust Fund, directs \$5 to the Clerk of the Court Operations Conference Operating Fund, and directs \$10 to the Clerk of the Court

Operations Conference Contingency Fund. The bill increases other service charges and removes authority for the county to assess amounts in excess of specified service charges. The bill prohibits additional service charges or fees and increases the service charge for instituting an appellate proceeding from \$75 to \$250. In addition, the fee for reopening a civil action shall be no more than \$50.

**Section 7:** Amends s. 28.2401, F.S.; to increase various services charges for probate matters and prohibits county governing authorities from imposing additional charges.

**Section 8:** Creates s. 28.2402, F.S.; to impose a \$200 fee on a county or municipality for filing municipal code or ordinance violation in civil court. The fee is to be paid to the clerk of the court for performing court-related functions.

**Section 9:** Creates s. 28.246, F.S.; to require the clerk of the court to report to the legislature the total amount of service charges and fees assessed, waived, and collected. The bill allows for partial payment of court-related fees to the clerk and sets a distribution order for collected charges and fees. The order of distribution of partial payments is as follows: 1) moneys for the clerk, 2) moneys for the state for Article V related costs, 3) moneys for the state General Revenue, 4) moneys for state non-Article V related purposes, and 5) moneys for counties and municipalities. The bill allows clerks of the court to refer unpaid collections to a private attorney. This section is effective July 1, 2003.

**Section 10:** Creates s. 28.35, F.S.; to establish the Clerk of the Court Conference composed of three clerks and the Chief Justice of the Supreme Court. The purpose of the conference is to: 1) recommend changes to the court related service charges and fees to the legislature, 2) review individual clerk of the court projected revenues and budgets, 3) determine payments to clerks of the court whose expenditures exceed their revenues, 4) develop an accountability system, 5) implement a clerk education program, and 6) provide funding from the Clerk of Court Operations Conference Operating Fund for a statewide case information system. The bill requires the Florida Association of Court Clerks to establish a depository for funds to pay for the duties of the Clerk of Court Operations Conference and for payment to clerks of the circuit court whose expenditures exceed their revenues.

**Section 11:** Creates s. 28.36, F.S.; to require the clerks of the court to provide a balanced budget where revenues meet or exceed expenditures to the Clerk of Court Operations Conference. The bill requires a special budget for the period July 1, 2004 through September 30, 2004 to be submitted by May 1, 2004. Thereafter, the budget submitted would be due by September 1 for the period of September 1 through October 1. The bill allows a reserve not to exceed 10 percent of budget.

**Section 12:** Creates s. 28.37, F.S.; to require that clerks that collect revenues in excess to meet their budgetary needs, remit such excess revenues to the state each January 1 following the clerk fiscal year. The first such remittance is due January 1, 2005. The funds are to be deposited in the state General Revenue fund for the purpose paying selected expenses of the state court system.

**Section 13:** Amends s. 34.032, F.S.; to require that deputy clerks of the court appointed for the sole purpose of issuing arrest warrants for county or municipal ordinance violations be funded by the county. This section is effective July 1, 2004.

**Section 14:** Amends s. 34.041, F.S.; to increase the initial filing fees for instituting various civil actions. According to the Florida Association of Court Clerks, the average for current filing fees for claims less than \$100 is \$48. Under the bill, the fee for such claims will be \$50. For claims of more than \$100 and less than \$2,500, the average filing fee is currently \$107. Under the bill, the fee will be \$150. For claims over \$2,500, the average filing fee is currently \$153. Under the bill, the fee will be \$300. The bill maintains the requirement that \$7 of the initial filing fee shall be remitted to the Department of Revenue for deposit in the state General Revenue Fund and \$2.50 shall be deposited in the Court Education Trust Fund. The bill prohibits counties from assessing additional service charges or fees. The bill removes the discretion of the judge to waive the service charge for a civil action and includes counties and municipalities in those parties required to pay a service charge for instituting any appellate proceeding.

**Section 15:** Amends s. 34.191, F.S.; to redirect certain fines and forfeitures from the county to the clerk of the court to pay for court-related costs. The bill transfers the authority to assign the collection of charges and fines to a private attorney or collection agency from the county to the clerk of the court. This section is effective July 1, 2004.

**Section 16:** Amends s. 44.108, F.S.; to repeal the authority of the county to levy service charges on court proceedings to pay the costs of court mediation and arbitration. This section is effective July 1, 2004.

**Section 17:** Amends s. 55.505, F.S.; to increase the service charge for recording a foreign judgment from \$25 to \$37.50.

**Section 18:** Amends s. 55.10, F.S., to increase the fees charged by the clerk of the court for services performed for liens on real property imposed as a result of a judgment or court order.

**Section 19:** Creates s. 55.312, F.S.; to assess a service charge on certain money judgments and settlement agreements in excess of \$100,000 except for dissolution of marriage or breach of contract. The bill allows the service charge to be paid by any party or allocated to more than one party. The clerk of the court must collect such charges and remit the funds to the Department of Revenue for the deposit of such revenues into the state General Revenue Fund. The bill requires the Department of Revenue to establish forms and rules. The Department of Revenue to report to the legislature by February each year on the amount received in the prior calendar year. The service charge is to be used to pay for the cost of the court. The bill prohibits attorneys to disburse proceeds to a client in a civil case until service charges are paid. This section is effective July 1, 2004.

**Section 20:** Amends s. 61.14, F.S.; to increase certain court related fees assessed for delinquency of child support and alimony.

**Section 21:** Amends s. 142.01, F.S.; to specify the fine and forfeiture fund in each county shall be used to pay for the costs of the clerk incurred in performing court related functions. The bill

removes authorization of counties to receive funds to pay the cost of criminal prosecutions and to transfer excess funds to the county general fund. This section is effective July 1, 2004.

**Section 22:** Amends s. 142.02, F.S.; to limit the use of county funds from a levy of a special tax to pay for the cost of criminal prosecutions. This section is effective July 1, 2004.

**Section 23:** Amends s. 142.03, F.S.; to redirect the deposit of fines and forfeitures to the clerk of the court for use in performing court-related functions. This section is effective July 1, 2004.

**Section 24:** Amends 142.15, F.S.; to redirect fees collected by the sheriff to the county where the crime was alleged to have been committed. This section is effective July 1, 2004.

**Section 25:** Amends s. 142.16, F.S.; to redirect fines and forfeitures to the clerk of the county in which the case was adjudicated. This section is effective July 1, 2004.

**Section 26:** Amends s. 145.022; to prohibit counties from appropriating a salary to the clerk of the circuit or county courts, if all fees collected by such official is turned over to the board of county commissioners. This section is effective July 1, 2004.

**Section 27.** Amends s. 212.20(6)(d), F.S., reducing the percentage of sales and use tax revenues that goes to local governments. The Local Government Half-cent Sales Tax distribution is reduced from 9.653 percent to 8.814 percent. The distribution to the Revenue Sharing Trust Fund for Counties is reduced from 2.25 percent to 2.079 percent and the distribution to the Revenue Sharing Trust Fund for Municipalities is reduced from 1.0715 percent to .99017 percent. These provisions go into effect July 1, 2004.

**Section 28:** Amends s. 218.35, F.S.; to remove the requirement for the clerk of the court to file a budget with the state court administrator and the board of county commissioners. The clerk shall prepare a budget as provided in s. 28.36, F.S. This section is effective July 1, 2004.

**Section 29:** Amends s. 318.15, F.S.; to increase various fees for persons failing to comply with civil penalties, fails to attend driver improvement school, or fails to appear at a hearing.

**Section 30:** Amends s. 318.18, F.S.; to increase various fees for penalties for non-criminal dispositions and create a separate service charge of \$10 to be paid to the clerk of the court. The bill increases the fee to dismiss citations and the administrative fee for cases where adjudication is withheld. The bill creates a service charge of \$10 for court costs that shall be paid to the clerk of the court. The bill imposes an assessment of \$20 in addition the limit for court costs imposed.

**Section 31:** Amends s. 318.21, F.S.; to increase the portion of civil penalties that are paid to the clerk of the court from five-tenths of a percent to five percent.

**Section 32:** Amends s. 322.245, F.S.; to increase the delinquency fee from \$10 to \$15 for persons who are charged with specified criminal offenses and fail to comply with the directives of the court.

**Section 33:** Amends s. 327.73, F.S.; to increase the charge from \$12 to \$18 for court costs for anyone who fails to comply with the court's requirements or fails to pay specified civil penalties;

**Section 34:** Amends s. 382.023, F.S.; to increase the fee from \$7 to \$10.50 for dissolution of marriage. The bill increases from \$3 to \$4.50 the portion to be retained by the circuit court and from \$4 to \$6 the portion remitted to the state.

**Section 35:** Amends s. 713.24, F.S.; to increase the fee for certain services performed by the clerk of the court in transferring liens.

**Section 36:** Amends s. 744.3135, F.S.; to increase the fee from \$5 to \$7.50 paid to the clerk of the court for processing guardian files.

**Section 37:** Amends s. 744.365, F.S.; to increase the fee from \$50 to \$75 paid to the clerk of the court for an inventory filed by a guardian. The bill eliminates the requirement that the county pay the auditing fee when such fee is waived by the court.

**Section 38:** Amends s. 744.3678, F.S.; to increase the fees paid by the guardian to the clerk of the court for filing an annual financial return.

**Section 39:** Creates s. 921.26, F.S.; to specify that court costs assessed under s. 938.02, F.S. shall be collected before any other court cost.

**Section 40:** Creates s. 938.02, F.S.; to impose a \$125 court cost against persons who plead guilty or nolo contendere, or is convicted of any felony, misdemeanor, or criminal traffic offense. The bill prohibits the court from waiving the court cost. The bill allows authorities to collect the unpaid court cost from any monies or accounts of incarcerated persons. The bill retains the \$100 portion of the court cost charge for the clerk of the court for misdemeanor cases and directs all other court costs to be remitted to the Department of Revenue for deposit in the state's General Revenue Fund.

**Section 41.** Effective July 1, 2004, amends s. 938.05, F.S., deleting reference to the Local Government Criminal Justice Trust Fund, and providing that the clerk of the court shall deposit and allocate funds collected monthly under this section as follows:

- Forty percent to the General Revenue Fund
- Twenty percent to a trust fund for the benefit of the state attorney
- Twenty percent to the Indigent Criminal Defense Trust Fund
- Twenty percent to the Court Education Fund

**Section 42:** Amends s. 938.35, F.S.; to allow the clerk of the court, rather than the county to collect fines, court costs and other charges through a private attorney or collection agent. This section is effective July 1, 2003.

**Sections 43 through 144.** These sections rename "magistrates" as "trial court judges" and "masters" and "general or special masters" as "general or special magistrates" in the following sections of law: 26.012, 34.01, 48.20, 316.635, 373.603, 381.0012, 450.121, 560.306, 633.14,

648.44, 817.482, 828.122, 832.05, 876.42, 893.12, 901.01, 901.02, 901.07, 901.08, 901.09, 901.11, 901.12, 901.25, 902.15, 902.17, 902.20, 902.21, 903.03, 903.32, 903.34, 914.22, 933.01, 933.06, 933.07, 933.10, 933.101, 933.13, 933.14, 939.02, 939.14, 941.13, 941.15, 941.17, 941.18, 941.141, 948.06, 985.05, 56.071, 56.29, 61.1826, 64.061, 65.061, 70.51, 92.142, 112.41, 112.43, 112.47, 162.03, 162.06, 162.09, 173.09, 173.10, 173.11, 173.12, 194.013, 194.034, 194.035, 206.16, 207.016, 320.411, 393.11, 394.467, 397.311, 447.207, 447.403, 447.405, 447.407, 447.409, 475.011, 489.127, 489.531, 496.420, 501.207, 501.618, 559.936, 582.23, 631.182, 631.311, 633.052, 744.369, 837.011, 838.014, 839.1441, 916.107, 938.30, and 945.43.

**Section 145:** Repeals ss. 142.04, 142.05, 142.06, 142.07, 142.08, 142.09, 142.10, 142.11, 142.12, 142.13 and 939.18, F.S., relating to compensation to witnesses and others from the fine and forfeiture fund and the imposition of additional court costs to be paid by persons pleading guilty or nolo contendere, or is found guilty of a felony, misdemeanor or criminal traffic offense for use by the county in paying for court facilities.

**Section 146:** Except as otherwise expressly provided in this act, this act shall take effect May 1, 2004.

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

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

The bill reduces the percentage of state shared revenues with counties and municipalities and thus appears to require approval by two-thirds of the membership of each house of the legislature pursuant to s. 18 (b) of art. VII of the Florida Constitution.

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

None.

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

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

###### **Tax Distributions**

In order to fund the state funding requirements of Revision 7, the bill redirects sales and use tax revenue from local governments to the state's General Revenue Fund. Specifically, the bill reduces the percentage of sales and use tax revenues that goes to local governments. The Local Government Half-cent Sales Tax distribution is reduced from 9.653 percent to 8.814 percent, generating \$135 million for deposit in the General Revenue Fund in fiscal year 2004-05; the Revenue Sharing Trust Fund for Counties

distribution is reduced from 2.25 percent to 2.079 percent, generating \$27.2 million for deposit in the General Revenue Fund in 2004-05; and the Revenue Sharing Trust Fund for Municipalities distribution is reduced from 1.0715 percent to .99017 percent, generating \$12.9 million for deposit in the General Revenue Fund in fiscal year 2004-05.

<b>FY 2004-05</b>	<b>State GR Fund</b>	<b>Local Government</b>
½ Cent Sales Tax	\$ 135.0	\$ (135.0)
County Rev. Sharing	27.1	( 27.1)
Municipal Rev. Sharing	<u>12.9</u>	<u>( 12.9)</u>
<b>Total</b>	\$ 175.0	\$ (175.0)

**State Fee Increases and Transfer of Excess Revenue to State**

SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	AMOUNT OF STATE REVENUE PROJECTED (in millions)
\$300 initial circuit civil filing fee, and \$250 appeals fee (Of the \$300 initial fee, \$217.50 goes to clerks, <b>\$65 goes to the state</b> , \$15 goes to the Clerk of the Court Operations Conference funds, and \$2.50 goes to the Court Education Trust Fund as under current law)	s. 28.241	\$20.6
\$7 General Revenue service charge <b>deleted from circuit civil</b> filing fees	s. 28.241	\$(2.2)
\$125 cost for misdemeanor, criminal traffic and felony convictions (\$100 from misdemeanors and criminal traffic goes to clerks, and <b>\$25 goes to the state; and all \$125 from felonies goes to the state.</b> Assumes a 50% assessment rate and a 40% collection rate, as used by the FACC in their analysis. HOWEVER, based on new language in the bill, both the assessment rate and the collection rate could rise significantly.)	s. 938.02	\$6.3 at current assessment & collection rates; \$31.3 at 100% assessment and collection rates.
SUBTOTAL MINIMUM REVENUE BASED ON FY 2000-01 DATA		\$24.7 to \$49.7
<b>SUBTOTAL PROJECTED TO FY 2004-05 (using same growth factor as FACC used for clerks' revenue)</b>		\$28.2 to \$56.7



SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	AMOUNT OF STATE REVENUE PROJECTED (in millions)
Surcharge on certain judgment or settlements over \$100,000	s. 55.312	Indeterminate
Surplus clerks revenue transferred to state each January 1 – (projected for 2004-05 by FACC as \$337.5 million of clerk costs less \$493.9 million of clerk revenues and contingency fund distributions)	s. 28.37	\$156.4
<b>TOTAL PROJECTED INCREASED STATE REVENUE FROM FEES AND TRANSFERS FOR FISCAL YEAR 2004-05</b>		\$184.6 to \$213.1

Total Projected Increase in State Revenue	2004-05 (millions)
Increase in Sales Tax Revenue From Local Distributions	\$175.0
Increase in Fees and Transfers	\$184.6 to \$213.1
<b>Total</b>	\$359.6 to \$388.1

The surplus clerks’ revenue to be transferred to the state should decline over time as clerks’ increase their budgets and use a greater portion of the fee revenue.

**B. Private Sector Impact:**

The net change in all fees and charges to judicial system users during state fiscal year 2004-05 using Florida Association of Court Clerks and Comptrollers (FACC) estimates is an increase of \$196.2 million. This is calculated as follows:

Fiscal Year 2004-05	(millions)
Total Estimated Clerk’s Revenues From Fees and Charges	\$ 492.1
LESS: Fee and Charge Revenues Currently Used to Fund the Clerks	(118.5)
LESS: Current Fee and Charge Revenue to be Redirected From the Counties	(162.2)
LESS: Current Federal Funds Received for Child Support Activities	( 15.2)
<b>NET INCREASE IN FEES AND CHARGES</b>	<b>\$ 196.2</b>

**C. Government Sector Impact:**

**Local Government Impact:**

The impact of the bill on local governments is threefold.

1. A positive impact on counties arises from the elimination of county funding for court-related functions of the clerks.

2. A negative impact results from the redirection of numerous fees, fines, and charges from the counties to the clerks.
3. A negative impact on both county and municipal governments will results from the reduction in the state 1/2 cent sales tax and revenue sharing distributions.

The Florida Association of Court Clerks has conducted an analysis that shows a net positive revenue impact to counties from the changes to fees and charges in this bill, excluding the changes to the state revenue sharing and 1/2 cent sales tax distributions.

Of the \$264.4 million of the court-related costs of the clerks that are not covered by fees and charges, the counties will be required to continue to pay only the costs associated with communications and technology, pursuant to chapter 29, F.S., currently estimated to be \$55.6 million. This saves the counties \$208.8 million. However, counties will lose revenues from fines and forfeitures and filing fee surcharges totaling \$162.2 million. Therefore the net gain to the counties is the \$208.8 million in saved expenditures less the \$162.2 million of lost revenues, or **\$46.6 million**.

In addition, the FACC indicates that the counties will not have to pay \$1.5 million for the jury management costs for Dade, Broward, Palm Beach, Osceola, and Orange counties, and will save another \$5 million of in-kind costs associated with items such as medical benefits, risk management, and workers compensation.

The table below shows the total fee and charge revenues, estimated by the FACC, that will fund the clerks' operations for each source of revenue proposed in the bill.

SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	ESTIMATE OF REVENUE FOR CLERKS USING FY 2000-01 DATA (in millions)
\$300 initial circuit civil filing fee, and \$250 appeals fee (Of the \$300 initial fee, <b>\$217.50 goes to clerks</b> , \$65 goes to the state, \$15 goes to the Clerk of the Court Operations Conference funds, and \$2.50 goes to the Court Education Trust Fund as under current law)	s. 28.241	\$38.3
\$300 dissolution of marriage fee	s.28.101	\$30.1
\$50 fee for county civil claims under \$100; \$150 fee for county civil claims \$101 to \$2,500; \$300 fee for county civil claims over \$2,500 (\$7 goes to the state General Revenue Fund, and \$2.50 goes to the Court Education Trust Fund.)	s.34.041	\$97.2
\$25 fee for reopening any circuit civil case (non-criminal and non-traffic)	s. 28.241	\$10.1
\$125 cost for criminal traffic violations (\$100 goes to clerks, \$25 to state; assumes a 50%	s. 938.02	\$5.4

assessment rate and a 40% collection rate)		
SOURCE OF REVENUE	FLORIDA STATUTES AMENDED OR CREATED	ESTIMATE OF REVENUE FOR CLERKS USING FY 2000-01 DATA (in millions)
\$20 cost for civil moving traffic violations added cost of \$20; and \$10 cost for civil non-moving traffic violations (assumes a 90% assessment rate and a 75% collection rate)	s. 318.18	\$31.5
\$200 filing fee paid by county or municipality for filing municipal code or ordinance violations in civil court	s. 28.2402	\$25.9
\$125 cost for misdemeanor and felony convictions ( <b>\$100 from misdemeanors goes to clerks</b> , and \$25 goes to the state; and all \$125 from felonies goes to the state. FACC analysis assumes a 50% assessment rate and a 40% collection rate. <b>HOWEVER</b> , based on new language in the bill, both the assessment rate and the collection rate could rise significantly.)	s. 938.02	\$3.5
Various service charges for probate matters	s. 28.2401	\$15.7
50% increase in various service charges	s. 28.24, s. 34.041, s. 55.505, s. 55.10, s. 61.14, s. 318.15, s. 318.18, s. 318.21, s. 322.245, s.327.73, s.382.023, s.713.24, s.744.3135, s.744.365, s.744.3678	\$41.7
Redirection of various fee and fine revenues from counties to clerks	s. 34.191, s. 142.01, s. 142.03, s. 142.16	\$116.4
Existing Child Support revenue from federal funds	Current law	\$15.2
<b>TOTAL BASED ON FY 2000-01 DATA</b>		<b>\$431.0</b>

<b>FACC PROJECTED TOTAL CLERKS’ REVENUE FOR FY 2004-05</b>	<b>\$492.1</b>
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As was indicated above under the Public Sector Impact, the \$492.1 million in revenue is not entirely new revenue, since \$280.7 million is currently collected from fees and charges used to fund the operations of the clerks, and \$15.2 million is currently received from federal funds. **Net new revenue is therefore \$196.2 million.**

In addition to the revenues that will be available to the clerks as detailed in the table above, approximately \$1.6 million will be deposited in the Clerk of the Courts Operations Conference Operating Fund and \$3.2 million will be deposited in the Clerk of the Court Operations Conference Contingency Fund each year from the \$5 and \$10 allocations of the \$300 initial circuit civil filing fee.

According to the FACC analysis, 9 clerks offices will not receive sufficient revenues under the proposed fee and charges schedule in this bill. Their collective deficit is projected to be \$1.9 million in FY 2004-05. These deficits will be funded using the receipts of the Clerk of the Court Operations Conference Contingency Fund.

The \$175 million reduction in shared sales tax revenues to counties and municipalities represents the growth in sales tax revenues local governments would have received over fiscal year 2004-05 and fiscal year 2005-06. It is anticipated that beginning in fiscal year 2006-07, local governments will be back at the 2003-04 level of state shared sales tax revenues. The \$175 loss of sales tax revenue is estimated to be distributed as follows:

Revenue Source	Counties (millions)	Municipalities (millions)
½ Cent Sales Tax	\$ (90.5)	\$ (44.5)
Revenue Sharing	(27.1)	(12.9)
<b>Total</b>	<b>\$ (117.6)</b>	<b>\$ (57.4)</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.